UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	15-CR-637 (KAM)
Plaintiff,	:	
	:	United States Courthouse
-against-	:	Brooklyn, New York
	:	
MARTIN SHKRELI,	:	
	:	Friday, July 28, 2017
Defendant.	:	9:00 a.m.

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TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
BEFORE THE HONORABLE KIYO A. MATSUMOTO
UNITED STATES DISTRICT JUDGE, AND A JURY

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Proceedings recorded by Stenographic machine shorthand, transcript produced by Computer-Assisted Transcription.

(In open court; outside the presence of the jury.)

THE COURT: Good morning, everybody. Please have a seat.

So we received the party's joint submission regarding the deposition affiliate. We've incorporated it into a new iteration of the jury instructions that we have designated Court Exhibit 4.

The verdict sheet is unchanged, though, it remains 4-A or it will be 4-A and it appears, as you know, in Count 8 at Page 78, I believe.

So I want to make sure that is acceptable to the defense.

MR. BRAFMAN: Yes, Your Honor.

MR. AGNIFILO: Yeah, I'm having trouble downloading it.

THE COURT: We'll also try to get you a hard copy.

MR. BRAFMAN: Yeah, that's fine.

THE COURT: Yes, Ms. Smith.

MS. SMITH: Judge, before you get started, we have two issues we wanted to raise based on Mr. Brafman's closing remarks yesterday. The first is that prior to trial, we filed a motion in limine that the defense should not be able to argue about the defendant's future plans if he's acquitted or what punishment might mean for him, and Mr. Brafman on June 19th at the final pretrial conference

said that it was not his intention to base the jury that they should acquit him because this is -- the line that they want, that he makes some very devastating diseases, and there were two sections in his closing yesterday where he said exactly that.

One was on Page 5336, he said, Making someone a felon for the rest of their life is a very, very tough decision and when you're dealing with anyone who has to be right, but when you're dealing with maybe one of the most extraordinary minds of this generation, you need to be right before you snuff that out.

And then also on Page 5377 he said, That requires you to understand how special his mind is and how careful you need to be before just tossing it in a heap.

So we feel that a limine instruction to the jury would be appropriate. On Page 90 of the jury instructions there's a section on -- that the jury shouldn't consider punishment.

THE COURT: All right. Would you wait one moment, I'm going to tell my clerk to hold off making multiple copies of a 90-page document.

MS. SMITH: Oh, I'm not requesting for a change, I'm just asking that it be read to the jury.

THE COURT: Oh, right now. Okay.

MR. BRAFMAN: Your Honor, most respectfully, I

think everything I said was fair comment on the evidence that their witnesses produced. And if you want to incorporate something in the section on your charge concerning sympathy of the future, I can accept that.

But we didn't ask the jury --

THE COURT: Before you start arguing, let me just please call my clerk and make sure we don't waste more time and paper on instructions, which should have been finalized a long time ago.

(Pause in proceedings.)

THE COURT: All right. Let me finish hearing from Ms. Smith and then I will hear from Mr. Brafman.

MR. BRAFMAN: I think she's finished.

MS. SMITH: So that was point 1.

And then secondly Mr. Brafman made a comment about Marek Biestek, and he said, Do you see him in this case? Do you see him sitting next to Martin? Why he is not Martin Shkreli. And so we also ask that the Court read from the jury instructions, again we're not asking for a new instruction, but on the section that says Consider only this defendant.

So those are the two kind of oral instructions to the jury.

One, stop considering punishment and one about considering only this defendant that we would ask the jury

to be instructed. I think both of those are proper.

And the first argument about his plans post-acquittal and about how special he is and about that's the reason why you should not convict him, are arguments Mr. Brafman represented he would not make.

MR. BRAFMAN: Your Honor, when you make a representation in preliminary instructions and then you watch the trial unfold and the Government introduces evidence in which every witness talks about how brilliant he is and how special he is, that's fair comment on the testimony. If Your Honor wants to include something in your jury instructions about this, I have no problem with that.

But after Ms. Smith finished, we pointed out that she made a glaring error on the way she interpreted Rule 144 and we didn't ask you to instruct the jury at that time. We incorporated it into to the Court's Charge. I think it would be inappropriate because everything I did was fair comment, and I would ask you if you are going to change your instructions, so that be in your jury instructions and not do it at that point.

She said a number of things that were inappropriate and our position was you're going to cover it in the jury instructions. So I think to do it now would just be unfair and it's not the way Your Honor treated her error which was a glaring error and it's a glaring error as

a matter of law, so we don't even need to debate whether it was fair comment or not.

I walked a very careful line, Your Honor, and I did not -- I indicated in that comment that we're not asking for sympathy and you're not going -- you're going to be told by the Judge that you're not supposed to be consider sentence.

So I had did both parts.

THE COURT: Well, the consideration of sentence is definitely in the instructions. I think what the Government is asking for something beyond the sentencing that there has been a suggestion that somehow the great visionary of this generation, if the jury convicts him, will be stuffed out, that kind of a comment. So we can look at the instructions regarding --

MR. BRAFMAN: I'm sorry.

THE COURT: We can look at the instructions regarding the jury's -- that the jury not consider punishment. We can maybe add something to the effect about not considering, you know, the consequences of their decision on the defendant. I think that is fair.

MR. BRAFMAN: I think it is fair if you put it in your instruction.

THE COURT: I am not sure we need a special instruction to highlight.

I did have another question, though. There was a reference to the finding that Mr. Richardson had an inappropriate relationship and that he was therefore terminated or had to resign because of that. I don't believe that's in the record.

MS. SMITH: It's not in the record, Your Honor.

THE COURT: All right. Where did that come from?

MR. BRAFMAN: Well, it comes from what happened.

THE COURT: But it's not in the record.

MR. BRAFMAN: I thought it was. So to the extent that she said things that weren't in the record, that were inaccurate, I just don't think highlighting that particular point is appropriate now. And if you want to in your instructions say, if you find that any argument of counsel was based on something that's not in the record, you know, that's fine.

You know, you gave her complete latitude, we didn't object. There were a number of things that we take issue with. She made comments about exhibits which she's wrong on and I'll address them in my summation. She said Evan Greebel got shares, that's not true.

MS. SMITH: I didn't. I said they were -- I said that the Fearnow shares some of them were sent to Evan's address because there's an exhibit -- there's a FedEx label --

THE COURT: It's in evidence.

MS. SMITH: -- with his name on it.

MR. BRAFMAN: Your Honor, there was evidence in the record by Mr. Aselage that there was an commission report that he got that indicated and then Mr. Richardson's testimony indicates when he resigned.

I think that's fair comment.

THE COURT: You went beyond that, though. You said there was a finding in the commission report that Mr. Aselage had an inappropriate relationship with Mr. Shkreli and was therefore forced to resign.

MR. BRAFMAN: No, but he --

THE COURT: My concern was that we had, you know, talked about not suggesting to the jury that because of someone's sexual orientation or relationship that that not be grounds for --

MR. BRAFMAN: But that's what Ms. Smith said.

MS. SMITH: Actually he said that the commission was in October and November and that all he said was that there was a finding that there's a personal relationship, he didn't define it, and Mr. Richardson said that he left in March ark of 2015. So temporally the one week that we're not sure where that came from, and I think we can address that. We're not asking for an instruction on it.

MR. BRAFMAN: They can address it in rebuttal,

Your Honor, that's how this works. If I say something wrong they can say that. I don't think for the Court --

THE COURT: No. I am just saying that I want to make sure that we stick to references of evidence in the record.

MR. BRAFMAN: Yes, Your Honor.

THE COURT: Because that is a concern of mine.

MR. BRAFMAN: Okay.

THE COURT: It has nothing to do with who says it, but it has to do with what is in the record and my constant reminder for the jurors, they are to decide the case based only on the evidence that has been admitted in the record.

MR. BRAFMAN: And Ms. Kasulis can address it in rebuttal.

THE COURT: I beg your pardon?

MR. BRAFMAN: I think Ms. Kasulis can address it in --

THE COURT: I am just asking all lawyers to make sure that they do not refer to matters that are not in evidence.

MR. BRAFMAN: That's fine.

THE COURT: So in any event the Government wishes me to incorporate the additional language about directing that the jury not consider the future impact of a conviction on somebody's life or on humanity, I guess, as it was

couched.

And then the second issue was.

MS. SMITH: So why isn't Mr. Biestek sitting here. I do think that's covered by the jury instructions.

THE COURT: It is. And I think we can just incorporate it into the general jury instructions, not a specific instruction.

MS. SMITH: Okay. That's fine.

THE COURT: All right. Thank you.

Are all the jurors here?

(Pause in proceedings.)

THE COURT: I am going to engage the parties on this language, on the instruction point blank, the Government, and I think point two is covered.

MS. SMITH: It is.

THE COURT: Okay. Why don't you work it out. We will then need time to incorporate something.

MS. SMITH: Okay.

THE COURT: Okay?

(Pause in proceedings.)

(Jury enters.)

(Jury present.)

THE COURT: Good morning, members of the jury. All are present.

Please have a seat.

Mr. Brafman, if you would like to finish your summation, you may do so.

MR. BRAFMAN: Thank you, Your Honor.

BY MR. BRAFMAN:

Good morning, ladies and gentlemen.

THE JURY: Good morning.

MR. BRAFMAN: I hope you got some sleep last night. Sorry for keeping you until exactly 5:30, and I appreciate your attention. And to the extent that at times during my summation last night I raised my voice or I expressed excitement, it's coming out of me. I'm not apologizing. I want to draw your attention to certain things and hopefully, I have.

So I'm going to continue this morning and I'm glad I wasn't required to finish because it's just too much stuff that's important and you were tired and I was tired. So today is a fresh start. I'm not going to go back, but there are things that I need to explain so that your verdict is accurately based on all of the evidence and not on the mistaken view of the evidence.

Exhibit 704, and I'm going to walk over to the Elmo and show it to you. Exhibit 704 is the Government's chart for MSMB Capital, and on a number of occasions in the courtroom during trial and certainly on summation, Ms. Smith stressed the fact that MSMB Capital didn't invest in

Retrophin, so how could you even consider factoring that into the equation? Well, she used very, very careful words when she said that.

MSMB Capital did not invest but they did receive free shares from Martin Shkreli. If they had not received shares, you would have investors coming in here and saying, I lost all my money. But because Martin deposited his shares, his ownership shares into MSMB Capital, they don't come in here and cry that they lost their money. They come in here and say well, it took me awhile to get my money, but they got it back and as you saw yesterday they got it back in duplicates and triplicate and some of them quadrupled their money. So I have a 5-dollar bill in my pocket that I have carried with me for almost 20 years. One of my kids gave it to me, it's important. But if I went down to the store in the lobby and bought some water and I used that 5-dollar bill, the owner would not care where that money came from. I'm giving it to him. It has value. So when Martin gives money or shares to MSMB Capital, MSMB Capital doesn't have to invest in Retrophin in order for the value of those shares to be counted when he sends out the statements which indicate what the value of the investment is.

So I needed to straighten that out. Because if you listen carefully, and I know you did, to Ms. Smith's

summation, she said MSMB never invested in Retrophin. But MSMB got Retrophin shares and they were Martin's shares and they had a right to be part of the valuation, which were completely ignored by the agent who when he made the charts who told you candidly that he looked at the bank accounts and he looked at the statements and MSMB Capital, it wasn't factored at all because MSMB Capital did not invest in Retrophin. So I wanted to straighten that out.

Second, if you look at the next Government Exhibit, which was 705, this is the MSMB Healthcare chart. And this chart is different and the agent said and the Government said that even if you include the Retrophin shares, even if you include the Retrophin shares. Well, first of all, you have to stop right there. What do you mean, even if? MSMB Healthcare invested in Retrophin. It is an investment of the fund. How can you have a chart on the -- of the fund without those shares? It just takes some guts to do that and just ignore the obvious. So when they say, even if it wasn't included, it was included. And if you include it they say, well, it only brings it up to half because the fund only invested $2 million. The Government is again attempting to mislead you.

That's not how investments work. You bought a house for $500,000 it goes up in value over time because you're in an area where developers want to buy real estate,

that 500,000-dollar house could go to 7, it could go to 8, it could go to a million. When you invest $2 million worth of Retrophin stock into the fund, you know from what you saw in evidence with the chart, Retrophin's stock kept going up. And eventually the people who held it hit a home run. So you can't just say, well, even if you count the 2 million, it would only be half the money he's claiming.

Martin is evaluating the value of the Retrophin stock and when you invest 2 million, you can't just end the discussion and say, well, it only was 2 million, so if you look at the chart the only -- it would only rise to half anyway.

When are you looking at the chart? When did you make that chart when Retrophin was at 2 or $3 or when Retrophin was at $17. And it changes dramatically as Mr. Neill conceded, as Sarah Hassan conceded, as Darren Blanton conceded. Some of them still holding their Retrophin stock because they see it going up and up and up. And again, I remind you the only reason it keeps going up, is because of the drugs that Martin produced and discovered and made part of Retrophin, because as Aselage told you, and I'll get to that in a minute, all Martin in terms of what the product is that Retrophin has now that is of value, he said to Thiola the drug that they have is responsible for the largest percentage of income by Retrophin, and he

concedes that happened like all of the other drugs on Martin's watch, on -- during Martin's tenure as CEO.

So when you look at that Government chart and you see the little red line and it doesn't go all the way up to the blue line, it's because they are not really factoring in the true value of Retrophin. The anticipated value of Retrophin when Martin is evaluating it.

There was much said about the settlement agreements. And the suggestion is by the Government that Martin improperly used Retrophin stock to pay back investors by using settlement agreements. That's not a fair statement. Because even if there were no settlement agreements, and he gave these people Retrophin stock, they would have their money and there was no settlement agreement. The settlement agreement is an important document from Retrophin's perspective because as Aselage told you and as Sarah Hassan told you, you don't want a lawsuit in an infant company. You don't want a lawsuit while you're trying to raise money. So you make a business decision, a business decision. You slip and fall in the supermarket and you sue them for $100,000 and the supermarket says, you know what? This is a nuisance lawsuit. We're going to give you $25,000 because we want a release. Because we don't want to supermarket to have this stigma of having been sued by one of their customers.

Retrophin was in its formative stages. These settlement agreements allowed Retrophin to go public without litigation surrounding its CEO, its founder, and the company.

So these people who got settlement agreements were threatening litigation. Many of the people who got settlement agreements who the Government didn't call got Retrophin stock, but they didn't get settlement agreements, because they weren't demanding. And then these were business decisions that Retrophin had a right to make to avoid litigation and Aselage told you sometimes the cost of litigation is -- costs more than the payment that you're involved with.

And Martin is paying these people, not because he has to, but because he thinks it is the right thing to do. And at the time he is paying them, he is doing this as a business decision as the CEO and founder of Retrophin and Aselage and Richardson understand this and their suggestion that there were no settlement agreements that they were aware of is preposterous, because let me ask this question which just occurred to me in the middle of the night, quite frankly. When Aselage fires Martin and tells Richardson he's got to go because he is in a chore, he went to a rap consent and he's tweeting and he's just not the image we want to create. It was after the restatement by Retrophin

in which the settlement agreements and consulting agreements became well, well -- became upfront and center in the face of Retrophin's Board. They can no longer ignore the fact that those existed. They want to tell you they didn't authorize them or they don't know them when they were made, that's one thing. But they did know about them before they fired Martin. So why did Mr. Aselage not come in here and say to you, We fired Martin because he gave unauthorized settlement agreements? Why didn't Richardson tell you, We discovered unauthorized settlement agreements and consulting agreements, so we fired Martin. They both chimed in saying Martin was fired because he was inappropriate. Because he was immature. That's a -- that's a damming point to the theory of the Government's case which suggests without question that the Board knew about these consulting agreements and settlement agreements before they restated the filings because that was the purpose of restating the filing. They told you they had to do it because these settlement agreements and consulting agreements came to our attention, they tell you. I submit they knew about them all along. But if it came to their attention and the Board's position is that they were unauthorized, why not fire him then? Isn't that the quintessential moment when they, Hey who told you do this? Instead you come into a federal courtroom and you testify under oath that the reason I fired

him was because he went to a concert that I didn't approve of.

And then the second thing is they tell you that Martin tried to defraud Retrophin, that Martin's actions were made in an attempt to defraud Retrophin.

So I want you to look around the courtroom and tell me who is the largest Retrophin shareholder? Not sitting next to the guy with the gray hair anymore because I'm here. He's sitting there in a gray sport jacket and a light blue shirt. I've identified Martin Shkreli as most people have today. He's the largest shareholder of Retrophin according to the evidence in this case.

Why would he do something that defrauds the company that, A, you slaved over to make the company.

B, you made a company.

C, you took it public.

And D, when you took it public, you have the most shares.

If he you defraud your own company it dilutes the value of your shares and you know he's smart. So he's not stupid enough to do that. Why would he do that? Why would he defraud his own company? So the suggestion that Martin was involved in an effort to defraud Retrophin is just not a true argument that has merit, that you can rely on.

Now I just want to talk to you a little bit about

some of the investors. I'm not going to go back and repeat what I said yesterday. But there is something about them that should jump out at you. There's a group of investors in this case, which make up most of the people called by the Government to testify as investors, who the Government proffers to you as people who would like to have known this, and would like to have known this, and Martin told them this and Martin told them that, suggesting that they were misled. Five, five out of the small group they chose to call are experts. Now when I say experts, the Court hasn't classified them as experts as you might do in if a scientist came in here to testify about a drug and we qualify them as an expert and therefore they were permitted to give an opinion.

But five out of the small group they called were experts in investing in hedge funds and in healthcare-related hedge funds. John Neill told you he has invested in between 50 and 100 hedge funds. Listen to -- 50 and a hundred hedge funds. He signed a subscription agreement in which he said, I read the private placement memorandum and then he conceded under oath that he didn't read it. We covered that yesterday.

But John Neill is someone who is 74 years old. He said he's been doing this for over 40 years. He has hundreds of millions of dollars, you can conclude, because

he has $50 million just in his wife's name in this partnership and he characterized his investment of $500,000, if you recall, as a small investment.

Now, none of us are in his league, I don't think. I don't know anything about your personal finances. But if you characterize a 500,000-dollar investment as a small investment, that tells you something about the amount of money the man has. And he told you very, very privately, but publicly that he has invested in 50 to 100 hedge funds and that he's done quite well for himself.

He's an expert in how you invest in hedge funds. He's an expert in what you know about hedge funds and its lack of liquidity and the discretion of the general partner. He's an expert.

Schuyler Marshall is an expert. Schuyler Marshall told you that he evaluates small companies for a living. He was a lawyer for 25 years, now he's in-house counsel for a private equity fund. And if you look at the subscription agreement under explanation of what you do for a living he writes in stock terms, I evaluate small companies or companies for a living. He's an expert. He understands what is involved in investing in a hedge fund. And I don't have to repeat all of the testimony he gave you about how it was what Darren Blanton said and it was Gloria Euclid said and it was nothing about what Martin said that caused him to

invest.

How do you know that? Because after the dinner in Texas he waited two months before investing and in those two months he confirmed that he evaluated the information Martin gave him in terms of stock tips, that he followed each of those stock tips and he concluded from following them that everything that Martin told him was right. He invested in at least one of those companies, he told you, and made money.

Darren Blanton told him he made a lot of money and he withdrew his money and Schuyler Marshall said when Darren Blanton told him that he was able to withdraw his money, that's what pushed him into believing that he should take a ride in this fund.

But even with all of that -- without all of that he evaluates small companies for a living. If you have any doubt, pull his subscription agreement and see how he describes what he does for a living.

This isn't someone who owns a grocery store and Martin talked him into investing and he's way out of his league and he's way over his head and he doesn't understand maybe the private placement memorandum, maybe he doesn't lack the education necessary to understand it. Schuyler Marshall is an expert.

David Geller spent his entire career trading

securities. He held two separate licenses as a trading -- as someone licensed by the SEC to trade over people's money. He's an expert. He never read the private placement memorandum. He relied on what Al Geller told him and what Kevin Mulleady told him and he never read the private placement memorandum.

And we discussed this yesterday that that's not fair to not read it and then come in here and complain. And for him to suggest I wanted liquidity. Well, if you had bothered to read the private placement memorandum you would understand that liquidity could be an issue. And if you're an expert in hedge funds, we discussed this with many of the people who testified, this is not putting your money into a brokerage account where you call up the broker and say, Sell my Google stock and send me a check and three days later you get a check. This a hedge fund. In a hedge fund you're a limited partner. You're investing there and you're under the discretion of the managing partner, Martin Shkreli. And if Martin Shkreli wanted to suspend withdrawals forever he can do it, but he didn't. He delayed withdrawals and he delayed withdrawals for a reason. You see the scrambling that was going on in trying to arrange financing for Retrophin. Yes, they said at one point Retrophin was hanging by a thread. There is no dispute about it.

But where did it go after it was hanging by a

thread? It went up. Do you know why? Because he got the investment of $10 million in the pipe transaction. That's what small companies do, they try and raise money. If they raise money, it's terrific; if they don't raise money, they go bust. But who is responsible for the money that they raise?

Did anyone else participate in the effort to raise money for Retrophin. Did Aselage do it? No. Did Richardson do it? No. Only Martin Shkreli. And he did it and it worked and they got paid.

So when they tell you, well, look at the slide, Retrophin has very little money. Yes, but that's not because Martin looted the treasury by going on a yacht, it's because Martin is sleeping in his office and found a way to convince the institutional investors in a pipeline to give them $10 million. And the e-mail traffic shows you that when any got the financing they started to repay these people, not to loot Retrophin, but because MSMB Healthcare had invested in Retrophin and some of these people were entitled to be repaid and now we have the money and now he was going to repay them and he is still the largest shareholder in Retrophin.

So he's giving away his money in many ways. Not when you trace each share where it came from, where did it go. But it -- his company if he's defrauding Retrophin he

loses. And David Geller is an expert. You cannot discount that when you decide whether he was defrauded by what somebody may have said.

Lee Yaffe. Lee Yaffe is the founder of Leerink Swann. Leerink Swann is an investment house that specializes in health care stocks. Think about that for a minute. Retrophin is a health care stock. Lee Yaffe comes to the table, he told you, with a whole lifetime of working in this field.

Now, what does he do now? Now he's still in a health care-related business. He runs abuse center clinics where people are treated for substance abuse. A health care-related industry. But you can't discount why you might want Lee Yaffe to be someone -- one of your consultants. He tells you under cross-examination that he had access to over 1,000 contacts in the health care industry. If you are running Retrophin, a health care company, that's valuable. Even if he doesn't do his cluster headache homework as he obviously admits not doing. I want him as a consultant. He's an important consultant. And what does he say in the e-mail, I'm not going to go back to where he talks about looking forwarding to working as a consultant. On the next e-mail he says that we're going to loop in or hoop in the Swanny. Who is Swanny? Swanny is the partner in Leerink Swann that is a health care investment house that deals with

the health care industry. I'm your consultant. I'm going to help you. It says in there, I'm going to help you. I'm going to help you in two ways: One, if I ever do this homework Marek Biestek gave you by looking at cluster headaches and the Government in its summation said he admitted not to be an expert in cluster headaches. If I give a college student an assignment to investigate cluster headaches, college student, not someone who has spent their whole life in health care. I give a smart college student an investment, do a paper on cluster headaches, tell me everything there is to know about cluster headaches, who makes them, how they're made, who treats them, how are they treated, what is the science, what is the research. Every college student with a computer could spend a couple of days and come up with a decent paper that might help me as an executive to understand the market, to understand who's doing it, to understand how to promote my drug if I'm working on a drug. And he says to you, he told the FBI that Retrophin is working on two drugs deal with cluster headaches.

Now he didn't say, I lied to them about that. How would he know that Retrophin is working on two drugs to deal with cluster headaches? Because he was told by Marek Biestek do this research, it's going to be helpful. Now there's no testimony in the record by Marek Biestek but I'm

allowed to ask you to draw reasonable inferences from his testimony.

How would he know that Retrophin is working on two drugs to develop cluster headache medicine for treatment? How would he know that? But Lee Yaffe nevertheless is still an expert. And he's an expert who invested with all of the expertise that comes with a lifelong involvement in health care stocks.

And what is his involvement, he is an investment banker at Leerink Swann. That's an investment house, not a bank. But they're the people who promote stocks they're the people who research stock. He's an expert who doesn't come here without any specific knowledge and Lindsay Rosenwald is the premiere expert that they produced.

Lindsay Rosenwald has told you that first of all, he is a doctor. He's a medical doctor that instead of practicing medicine invests in biopharmaceuticals. He is the founder of Chelsea Therapeutics, which Josiah Austin put $30 million into.

He is an investor by profession. He told you that. And when he gets the PPM he doesn't even look at it, he hands it off to his attorney. And he invested 100 grand. And he said -- he said, you know, if I win, I win; if I loss, I loss or words to that effect. He took a gamble. He saw Martin and he said, I thought Martin was very, very

smart. And Martin, if I called him a genius that fits but he's certainly out there on the side of the bell curve but he saw in Martin something that he felt comfortable about giving him a hundred thousand dollars, and his trust in Martin paid off randomly -- paid off terrifically, paid off well. Because he got 4 to $600,000 back on a 100,000-dollar investment. So they are experts.

And then you go to the witness who has more involvement in many ways with many of the investors than Martin Shkreli who some of them never spoke to before investing. Kevin Mulleady is a stockbroker by profession. He is a guy out there who is hustling investors because that's how he makes a living. When a stockbroker gets a new client, the stockbroker can end up making money if the client invests because you get commission as a normal broker relationship.

But forget about the brokerage issue for a minute. He's a stockbroker who is responsibile for Richard Coker coming into the case. Coker told you, I spoke to Mulleady, Mulleady is my broker that's who I spoke to, not Martin Shkreli. He never met Martin Shkreli before he invested. Kevin Mulleady is responsible for David Geller coming into this case. Because David Geller and Al Geller, the witness who you did not hear from, are both Mulleady clients and Mulleady spoke about how good Martin is at his work. And as

a result both David Geller and Al Geller invested.

So you can't blame Martin for saying anything to either of these two people which was fraudulent in nature or misrepresentation which caused them to invest. And Ed Spielberg, who you never met but who you heard about on summation for first time I submit, and Spielberg was hocking Martin for a return of his money because he put in I think $25,000 and he was upset when he didn't get a response. He doesn't call this a witness to testify that he was defrauded. But if he thinks he was, Kevin Mulleady is the one who put Ed Spielberg into the mix.

And Michael Lavelle another person who you never saw or heard testimony from was also put into the mix by Kevin Mulleady.

Now, in the Court's instructions there will be a reference to bias. The witness has a bias if a witness has a motive or a witness has a reason to testify in a manner adverse to the defendant or any other party, you have a right to consider it. It doesn't mean you have to discredit it or discount that testimony completely, but it is an issue. And Aselage has hold you about his bias. Aselage has told you that he has sued Martin for $65 million on behalf of Retrophin and Martin has countersued alleging, among other things, wrongful termination. You terminated me incorrectly or illegally without cause. Those lawsuits

Aselage told you are stayed pending the outcome of this trial.

But there's something else that Aselage told you that is pretty interesting, okay? Aselage told you that in order to fire Martin under the terms of his employment agreement, he needs a felony conviction. So let me read you from Page 3432: Retrophin is suing Mr. Shkreli for 65 million.

Answer: That's correct.

Question: And that lawsuit is stayed pending the outcome of this case?

Answer: That's correct.

Question: You understand that one of the claims made against Retrophin was that he -- meaning Martin -- could only be terminated if he was convicted of a felony; is that correct?

Yes.

If Martin is convicted of a felony, which is what happens if you conclude that he is guilty, Retrophin wins. Not only do they win $65 million but they get the right to legally terminate Martin Shkreli. I as CEO of Retrophin who last year made $7 million have a personal vested interest in seeing to it that Martin is convicted.

Now he never said that, but that's the clear inference that you can draw from the circumstances that

surround Aselage at the time he testifies. This trial is about in part whether or not you find beyond a reasonable doubt that Martin is guilty and then you convict him. And if you do, it's not just Martin who has to deal with it. Retrophin pops the champagne cork. They're really legally rid of Martin and they can try and get $65 million too. This is a motive.

And then you have something else that you need to focus on. Sometimes this stuff flies in and you don't have enough time some days to focus on it or even if we have time because the Court has given us all the time we need, we aren't able to develop it because during the cross-examination we're not permitted to argue with the witness, we're permitted to question the witness. Now is the time you can look at that testimony.

So from Aselage's testimony there's questions about who made Retrophin a success.

Martin is the one who at the time was the -- was responsible to Thiola being brought into Retrophin?

That's correct.

What about Chenodal; is that a product?

Chenodal is a product, yes, sir.

Was that founded during Martin Shkreli's tenure?

It was.

How about Vecto -- and he said, That came with

Chenodal.

So those three products Chenodal, Vecamyl, and Thiola were -- when Martin was running the company?

Answer: That is correct.

What about PKAN?

PKAN is a disease. We have a product RE-024 which is used to treat PKAN. PKAN is an acronym.

And then he explained the disease, and it's medical terms and I won't even try to pronounce it. It's the pantothenate kinase-associated neurodegeneration disease. PKAN is a childhood disease. RE-024 is Retrophin.

Question: RE-024 was Brent there when Mr. Shkreli was in charge of Retrophin, correct.

Yes. RE-024 correctly was developed when Mr. Shkreli was CEO.

That's his answer.

RE-024 correctly was developed when Mr. Shkreli was CEO?

Four major pharmaceuticals properties all developed when Martin Shkreli was part of Retrophin. Nothing in the record about what was developed since Martin is out because then Martin started a competing company that Mr. Shkreli -- that Mr. Aselage is aware of. Martin started a company called Turig which Mr. Aselage is aware of.

And he tells you Thiola, listen to this:

Question: Today Thiola accounts for most of the revenue that Retrophin makes in a year, isn't it true?

Answer: Thiola is our largest, single product.

Thiola is Retrophin's largest single product.

Why do I stress that? I stress that because of the next series of questions. I stress that because he said that if Turig is, in fact, developing a generic equivalent to Thiola it would damage Retrophin substantially. And when Martin was fired the colloquy was: I'm going to start a company that competes with you.

And if Martin competes with Retrophin, Retrophin could loose substantial part of its value and Martin has the ability according to Aselage to do that because Martin brought on all of these other drugs and at the end of the day he has a very real motive to get Martin convicted. He gets the lawsuit over with, Martin gets fired legally and he has an opportunity to shut down the science that's going down.

Listen to this testimony:

Question: Turig Pharmaceuticals is currently developing a generic equivalent, if you know, to Thiola, isn't that true?

I have no idea.

Question: You have no idea?

Answer: Correct.

Question: If a company has a money-making medicine like Thiola and a competitor produces a generic equivalent that could be made for much less, can that impact on the revenue of Retrophin?

Answer: Sure.

Question: And it could cause substantial harm to Retrophin?

Answer: Sure.

Do you understand, ladies and gentlemen, generic equivalent if you go to the pharmacy and if you ask for the brand name they charge you $80. You get the generic equivalent for $20. We all understand it happens every day. You're allowed to use your common sense.

So if Martin is developing a competitive drug to the largest income producing drug that Aselage tells you is the biggest money maker for Thiola, that's bad. Aselage and it is bad for Retrophin. And it gives them an incentive, an incentive just to swing his testimony a little bit. All he has to say is I don't approve the settlement agreements and the consulting agreements. And according to the theory of the Government's case, Retrophin is thereby defrauded and Martin should be convicted.

That's how simple it is. Because on balance Aselage's testimony, even though it may have been inadvertent helped Martin because it showed how petty he was

and how close minded he was and how narrow minded he was for the reasons he said that caused him to fire Martin. So at the end of the day, ladies and gentlemen, you cannot dismiss the bias that is inherent in Aselage's mind-set. And the Judge will tell you how to treat that if you find it. And the Judge will tell you again and again in her instructions that good faith by Mr. Shkreli, if you so find it, is a complete defense to the charges. And the Judge will instruct you how that is defined and what it means and listen to the totality of that charge.

(Continued on next page.)

MR. BRAFMAN: (Cont'g.) Now, I want to just touch on for just a minute the private placement memorandums that you must be sick of and I'm sick of and I'm not going to go through all of them, I'm going to just go through a couple of points because a number of investors suggested to you that what they wanted when they invested was liquidity. Now, they all parroted that line because at the end of the day that's what they complained about, I didn't have liquidity, I wanted liquidity and because I wanted liquidity and because I thought I was going to have liquidity, since I didn't get liquidity I was defrauded. No, they weren't. That's not me saying that, you look at the evidence which they ignored but which you didn't and which they had no right to ignore and in a minute if you read the private placement understanding -- private placement memorandum, you would know without doubt that if you're looking at liquidity, don't invest in this fund.

First of all, on the front page, and I'm just using as an example the private placement memorandum dated June 9th, 2010 but they all have these similar paragraphs I submit, this one: An investment in the partnership will involve significant risks. There is no assurance the partnership will achieve its investment objective or be profitable.

So, right off the bat you're ignoring the fact that you're taking a risk, by jumping into this pool you could drown, and if you're not a really good swimmer or you don't

have the ability to sustain yourself while treading water until you get your money back, this is not for you. If you want to put money in an investment where you could then turn around and buy it back or get it back in 15 minutes, this is not for you. This is a hedge fund and everyone who told you what a hedge fund is told you that a hedge fund is not something that offers liquidity because you're at the discretion of the general partner which in this case is Martin Shkreli.

Now, let's talk about express information that if you were David Geller and you didn't brief it but you read it or you were John Neill and you read it, the highlighted portion says: The limited partnership interest offered hereby are illiquid, they are illiquid, no public market for the limited partnership interest exists and in all probability none will develop. There are significant restrictions on the transferability of the limited partnership interests.

So, you're told two things; first of all, your limited partnership is illiquid, your limited partnership means your money may be tied up, your limited partnership is illiquid and there's no public market for them and there may be no public market. Well, maybe the government will say, yeah, well, that means my interest in the partnership can't be sold, my interest, I'm a limited partner and unless I find someone who wants to take my limited partnership and they meet

the criteria, that's a problem because I may not be able to get my limited partnership back. And the government will say, well, that doesn't say that the limited partnership is going to invest in restricted securities or illiquid securities. Yes, it does, it does, and if you read the private placement memorandum, you have no right to complain about the lack of liquidity because that's in there, that's what you're buying, that's what you are investing in.

Let me show you the paragraph that says that. Alternative investing generally: The partnership is designed for investors seeking potential long-term growth from alternative investments who do not require regular current income and who can accept a high degree of risk in their investments.

So, first let's focus on the word "long-term." It doesn't say 20 minutes, it doesn't say you get it back anytime you want to, it doesn't say you have a right to get it back anytime you want to. And then there is a very, very important section which none of the people who failed to read this saw but that's not to be -- Martin is not to be faulted. Let me take off the Post-It. It says: Investments with limited or no liquidity. The partnership will take significant positions in particular securities which are relatively large as compared to their trading volume or overall market capitalization. Such stocks often have less liquidity than

large capitalization issues.

You're being told that some of your investments are going to be used to buy stocks that don't have liquidity or buy investments that don't have liquidity. That's in the contract you are making with me. You can't ignore that, not read it and then say to me, whoa, you misled me, that's not fair. Martin assumes that every investor read this. He has a right to assume that. You know why, because you can't get into the investment without filling out a subscription agreement that says: I verify that I have read the private placement memorandum, I understand it, I have no further questions about it and I'm ready to do this.

I am the managing partner. Why do I have to doubt you when you verify that you've read the private placement memorandum and find out later when I'm on trial that the investor who claims to have been misled never bothered to read what they verified that they read. That's not fair.

I don't want to go back to the explanation I gave you yesterday but when you sign a contract with someone to do something and they do it and then you're not satisfied and they say, well, look at what you agreed to and you read it and you say, well, I wish I had read this when I signed and gave you my money, that's not fair, that's not how business works. If that's how business works, nothing would ever get done.

You hire someone to mow the lawn, they give you a

piece of paper to sign and it says: I don't have to mow all of the lawn. And you look at it and you say, if I had known this, I wouldn't have hired you.

Well, read the contract, these are expert investors, they've seen these documents before, documents like this before. Maybe if one of us got that and we're not used to hedge funds, private placement memorandums and we don't know, we would read it with a fine-tooth comb and call a friend or a lawyer and ask questions. They didn't even bother to read it.

Then there's a section on the valuation of assets, that for those who say, well, I thought he was investing only in shorts and longs which I could look up on the stock market, that's not true. Paragraph C in this exhibit on page 29 says: Securities with a limited market. Securities or other investments without an active trading market as hereinafter defined shall be assigned fear value by the general partner.

And then they give you the factors he uses and then it says: Such other factors as the general partner in its sole discretion deems appropriate.

You have no right to complain if Martin Shkreli valued Retrophin at $20 million which turns out to be 100 percent accurate but it took a little while for it to reach that valuation where you could actually realize the gain. These people -- this memorandum is telling the people that some of these investments are going to be hard to value

and the general partner has the right to value them. And then they say to you, well, you know, you never told me about Elea Capital and he never told people that Elea Capital was an investment fund that didn't do well. I don't have to tell you when you hire me, you know, I lost a case 20 years ago. You want to ask me, ask me, I'll tell you the truth. Nobody asked him about Elea Capital and it's in the private placement memorandum: In addition to forming and operating MSMB, Mr. Shkreli is the founder and portfolio manager of Elea Capital Management. And then it says he went to Intrepid and he was with Cramer Berkowitz. Well, everybody said to you, when I saw Cramer Berkowitz, man, I was hooked, because Cramer Berkowitz is Jim Cramer from CNBC, the man who runs around that room like a lunatic, but he's brilliant and people follow him and he has one of the highest viewing audiences in the world on investment advice. Is he a strange man, perhaps, but he's got a following and many, many, many, many times he's right, no guarantees but many times he's right.

So, when they saw he worked for Cramer, if they read this, they could be impressed but he didn't hide Elea Capital and there is not one investor who said to you, I asked Martin what happened at Elea and you lied to me. Not one investor said that. All they had to do was ask but they didn't read this, but he didn't hide Elea under a rock. And so what, a prior investment fund 11 years ago doesn't do well, it doesn't

end your life as an investment adviser. That happens, we lose in a business proposition, we don't pack up our bags and go home; you get fired from a job, you get another job. Lee Yaffe's father, not Lee Yaffe, his father invested in Elea Capital 11 years ago and invested $100,000 and Martin Shkreli could have said, you know what, Elea Capital is old news, I don't owe you any money, Lee, stop bothering me. He didn't, he gave him back his father's investment and he gave him back $250,000 more because of the aggravation. He didn't have to do that. Yes, Lee Yaffe was a pain in the neck and he chased him and he chased him and Martin said, you know what, I don't want to just have a lawsuit, I've started a new company, he's threatening me, he's bothering me and for the aggravation I'm not giving you 100, I'm giving you 250 and I want you to work for it, I want you to be a consultant, I want you to do something for the bonus that I'm giving you.

Then they said throughout this trial over and over and over again Martin told people that he graduated from Columbia. No, he didn't. Who told you that who's believable? And if you see that when he puts down in writing his background, this is Government Exhibit 122-64, Bates stamp 11963: Mr. Shkreli received his BBA from Baruch College, which we all know is a portion of CCNY, not Columbia University. So, whatever is in writing says CCNY, Baruch College. He never told anybody that he graduated from

Columbia. Why would you do that? You think he needs to tell an investor that he went to Columbia so that they would invest with him. Who told you that that was a very, very significant factor in my decision? Darren Blanton would care that he graduated from Columbia? Darren Blanton told you he invested in Martin because Martin made him a ton of money.

Let me focus for a minute on Count Seven. The government alleges in Count Seven that Mr. Shkreli together with others conspired to defraud Retrophin by causing it to transfer Retrophin shares to MSMB Capital even though MSMB Capital never invested in Retrophin.

Retrophin wasn't defrauded. Retrophin was not defrauded under the theory of Count Seven. You know why, because those shares came as follows: Please write this down if you're taking notes or please listen carefully because this is important, because the government is just trying, I submit, to stroke you into believing that this was a conspiracy.

The Retrophin shares were as follows: Kevin Mulleady, who didn't testify, transferred 10,000 shares to Martin Shkreli. That's in the evidence, in the documents. Marek Biestek transferred 4,167 shares to Martin Shkreli. Tom Fernandez transferred 50,000 shares to Martin Shkreli. Martin Shkreli took these 64,127 shares and then transferred 10,000 of his own shares to Retrophin -- from Retrophin to MSMB Capital. These shares are not coming out of the treasury of

Retrophin. They're coming out of Mulleady, Biestek, Fernandez and Shkreli and he transferred them to MSMB Capital. Why is the founder of a company not permitted to do that. He is not trying to conspire to steal from Retrophin. These shares were given to him by these people and he gave part of his own shares and he invested them into -- and he gave them to MSMB Capital. He deposited them into MSMB Capital. He did not take Retrophin shares to create this interest by MSMB Capital. Retrophin was never in possession of these shares at the time he did it because they had already gone out to these other people. Retrophin was not defrauded when MSMB Capital interest in Retrophin was created. These agreements were executed by consenting adults. When these agreements were made Retrophin was not yet even a public company. Please remember that, when these transfers were made Retrophin was not yet even a public company. It's my company, I am the founder of this company, I have people, none of who testified, Mulleady, Biestek, Fernandez, Martin, I gave them these shares to incentivize them to work. Well, because they worked, and when I wanted to put money into MSMB, I had a right to do it, I wanted to do it, I asked them to give me shares.

They're not taken from Retrophin. There is no fraud by Retrophin. There is no crime in that theory under Count Seven and you cannot convict him of Count Seven because it's a theory, that's what it is, it's a theory.

And when you think about whether the releases that are signed by people when they get their settlement agreements and they sign a release, because in return for the settlement agreements they agree to release Retrophin and MSMB and MSMB Healthcare and Martin Shkreli and he openly signs on behalf of all of them, you've seen those documents, there's no attempt to hide what's going on.

What happens soon after the releases are signed. Five months after the last settlement agreement Retrophin is listed on NASDAQ. You think Retrophin would have listed on NASDAQ if there were eight, ten, five, four major lawsuits filed by people who claim to have been defrauded by Martin Shkreli. Everybody benefits by the settlement agreements, especially Retrophin, because five months after the last agreement is signed Retrophin becomes a public company and you cannot ignore that fact. If the claim is that I defrauded Retrophin, it's just not true from the evidence, I submit.

Yesterday in her summation on a number of occasions Ms. Smith, and perhaps it was just a mistake, I'm not suggesting that she tried to mislead you, over and over and over again she told you that the employees of Retrophin are affiliates under the law and as affiliates under the law, they need to be treated as affiliates. That's not accurate. Her Honor will tell you under Rule 144, I submit, affiliates don't include employees. Affiliates include officers and directors

but they don't include garden variety employees. If I want to give a garden variety employee a share or shares to incentivize them to stay with the company because the company now needs you more than ever, when the company becomes public suddenly there's so much work to be done, and I give you these shares, if you're an employee, that's not an illegal affiliate where I am not allowed to do that. And you listen to the Court's instructions and I promise you you will hear some clarification.

Now, let's talk about Count Eight just for a minute. Count Eight has two types of conduct that the government says they are using to show that Martin controlled the shares and to corroborate that theory they say there was an agreement by the Fearnow recipients to allow Martin to control these shares.

Well, here are the Fearnow recipients, ladies and gentlemen (indicating.) So, let's first state the obvious, you have seven people who are alleged to be part of this conspiracy. The only person called by the government to establish this theory is Timothy Pierotti and I think in the cross-examination he was dealt with effectively and I think if you read his cross-examination, you will see that he is not believable (A), he stole $1.5 million from Martin Shkreli which prompted Martin Shkreli to write that letter to his wife and even though it may be bad form to write a letter to

someone's wife, you could understand the betrayal. When he was poor and he came to Martin before selling his wife's jewelry Martin gave him $5,000. He didn't have to give him $5,000. He could have said, I can't afford to give you money, I'm building a company, I'm sleeping in the office. That shows you the kind side of this person who everybody describes differently. They don't say, by the way, he also has a sweet spot for people in need. They don't tell you that Caroline Stewart couldn't get a job, a divorcée with two children, bouncing around, went to Germany to get a job, she told you, came back, went on interview after interview after interview and after three dinner dates with Martin Shkreli he gave her a job because he felt sorry for her. That nobody focuses on.

So, when Pierotti steals, in Martin's mind, he's angry, he writes emails, he tells him come back, you've got to work, you can't just take the money and run, and that's what he tells his wife, your husband wants the money but he doesn't want to work. Imagine I give you a million and a half dollars and then you walk out and you never come back to work. That money was so you should work, so you should stay.

So, they say to you, well, this shows that Martin was trying to control the shares. They're wrong, ladies and gentlemen. The bar graphs that they showed you for a second, there were hundreds of slides which came up on the screen, one, two, three slides gone, one, two, three slides gone.

Nobody here, I submit, and I'm not being disrespectful because I include myself in that group, you can't remember those slides, in a minute they're here, in a minute they're gone. You say what you want, the jury doesn't see it for more than a second and what are you supposed to do, you can't ask for the summation to be re-read. She gave you I think 350 exhibit numbers in her summation. You can ask for those exhibits but you can't ask for the summations to be read. And when you see those slides quickly and the government lawyer says to you that's what they mean, well, maybe you can conclude that's what they mean but, you know what, on some of this stuff she was wrong.

The bar graphs that they showed you are volume from November '12 to February 2013, they use that period of time because it reflects trading that is happening after the reverse merger up through the time the pipe closes. But the actual records show that during that time there were 3,243 trades, meaning 3,243 times there were buys and sells and shorts, and of those trades, 132 involve Fearnow shape recipients, 132 out of 3,243 people, and 81 of the 132 trades are people selling, people selling.

If the theory is Martin wanted them to buy to pump up the share, then somebody didn't get the memo. Pierotti is selling his shares, Vainio is selling his shares. These distributions were meant to incentivize these people, not as

part of a conspiracy to control them. It was during a period when Retrophin was treading water. You are the CEO, you want people to buy your stock. That's not market manipulation. You want people to see that there is activity in the stock but these people are selling, half of them are selling. That's not the program the government describes.

And there are 3,100 people out there who have nothing to do with Mr. Shkreli who are buying and selling because the company is starting with traction, the company is getting pipe financing. The company is getting financing that's being advertised in press releases, all appropriate. You get those -- those of you who are in the market or those of you who listen to just the news where they give you the reports every twenty -- at 10:56 and 9:56 every day, they talk to you about earnings reports, they talk to you about things companies are doing, company announcements. Yesterday Facebook made an announcement, their earnings were great, the stock rose $5 a share, not an illegal announcement, part of the ordinary course of advising people where the stock is up to. So, there is no theory here, there is no theory.

The government introduced that part of the recipients are Lindsay Rosenwald and Kocher of these shares. Lindsay Rosenwald and Kocher are threatening to sue Retrophin. Retrophin doesn't want a lawsuit when they're announcing financing, when the stock is starting to gain traction so they

settle with them, it's a business decision, it's a business decision, it's not a fraud. And the pipe investors, the people who put up to $10 million, you have a duty to them not to watch the company tank because of frivolous lawsuits.

There is no crime in Count Seven or Eight. Retrophin was not defrauded. Martin would not defraud Retrophin when he is the largest shareholder in Retrophin, (A), (B) this is the company he slaved to create. He has no interest in defrauding the company he created. Why would he do that to his own company.

And there is no backdating. No one has testified to the backdating except Jackson Su and Massella didn't understand it and Massella told you, when I saw this document I thought Martin Shkreli signed it. Well, I'll put it up one more time because this is very, very important, and if Mr. Agnifilo had not cross-examined Jackson Su, you would go away with the mistaken understanding that Martin Shkreli signed it.

And the date is 11/29/12 and you read Jackson Su's testimony, Jackson Su said to you: I put the date down. And Mr. Agnifilo correctly said: Why did you put the date down? Because it wasn't dated. He said: Well, who told you to put it down? Nobody. So, why did you put the date down? Because it wasn't dated so I put the date down. That's his testimony and whatever the government says to you on rebuttal or

whatever the government tries to argue, you can't get away from the fact that Jackson Su, who claimed not to be involved in any of the fraud, put the date down not because Martin told him this is important because I'm backdating an agreement or I'm backdating something which I need to backdate, he put it down because he's a busybody. He involves himself in stuff that he has no business being involved in.

He has a whistle-blower lawsuit pending against Retrophin. He goes to the SEC and he says, you guys should look at Retrophin, there's fraud stuff going on there. And what does he do, he goes back to work, sort of like secret agent man, he's working there but he's already made his bed with the SEC. So, he's working there while he claims there's a fraud and what's he doing, he's helping the company that he claims is working as a fraud. That's not the way a whistle-blower is supposed to work. You want to complain about a company that's involved in fraud, you don't go back to work there and secretly help the executive officer who you claim is doing the fraud. It's stupid and it's disingenuous and it's wrong and Jackson Su not only goes back there, he steals materials. He tells you he took Martin Shkreli's personal bank accounts and has them in his house. What right does he have to do that, and you know what his answer was: I didn't see a sufficient bank balance in Martin's records to comport with that of a chief executive officer of a company like

Retrophin.

What does that mean? He, among others, knows Martin is sleeping in the office, you can't work there without seeing Martin in the morning fast asleep when you get to work. Caroline Stewart said she noticed Martin slept in the office. Steve Richardson said he knew Martin was sleeping in the office. Martin wasn't hiding in a closet, he was lying on the floor, it is one room or one and a half rooms.

And Jackson Su tells you under oath -- sometimes, you know, you're stunned when you hear something because not only do you know from the cross-examination you're about to do that it's wrong but it doesn't sound like it's an intelligent observation, and Jackson Su tells you he's a smart guy, remember him, Asian-American, a young man, couldn't remember if he was arrested in Syracuse, sat there, told you: I looked at Martin Shkreli's bank records and I did not believe that he had enough money to be a successful hedge fund manager. You know why, because he wasn't doing this to become rich and for two years he wasn't rich and for two years he didn't have money in his bank. You should applaud him for that, not condemn him for that. So, Jackson Su said something's wrong, man, Martin Shkreli has got nothing in his bank account and he's the head of a hedge fund.

Now, I want to go back just one second to the Pierotti letter. Pierotti is another wonderful man who is

working there, got the over-the-wall email, deleted it and then went out and started to sell Retrophin stock. If he read the over-the-wall email, he would know that he's not supposed to do that. So, instead of reading it, he knew what it was going to say, so he deleted it so then he could say, well, I didn't read it so I'm okay. And he's selling Retrophin stock and he's selling a lot of Retrophin stock and he's doing it to make money and you know how we know that, because at some point from the letter that the government put into evidence, I won't put it on the board, I'll just read you this section, he's writing to his wife, Martin is writing to Pierotti's wife after Martin refuses to give back the money:

When Tim informed my partner Marek that he was "going to sell his wife's jewelry to pay for their mortgage" I immediately summoned Tim to our office and gave him a personal check for $5,000. Tim promptly deposited that that day. Tim likes taking my money and doing nothing for it. I told him that if he ever needed funds he could rely on me to provide them for him provided that he worked hard of course. Tim doesn't like that part.

He's a bad guy, Mr. Shkreli? I come to you and I say I'm going to sell my wife's jewelry if I can't pay my mortgage and I say to you, you know what, Tim, you know, Jackson Su knows I don't have any money but I'm going to give you $5,000 anyway and I give you $5,000.

And during the trial the government showed a transfer from Mr. Shkreli, once every couple of months he took some money, a transfer of $10,000 and $5,000 of that money went to Tim Pierotti. He's a bad guy? He's operating with a venal corrupt heart? Is he trying to bribe Tim Pierotti or is he trying to help him?

So, there's a sense of betrayal that I think jumps off of Pierotti's letter. It's not just I want to aggravate his wife, I want her to know what he did to me, I'm upset, I'm angry, and maybe Martin shouldn't have written the letter and if he had conferred with counsel before he wrote the letter, chances are he wouldn't have written the letter but think of it yourself, someone who you helped, someone who you were good to stabs you in the heart, leaves with your money and your stock and never comes back to work, that's not nice. Maybe it's not illegal but it's not nice.

So, the letter is not nice and leaving Martin is not nice after you cry to him for money but at the end of the day this is not about nice, this is about proof beyond a reasonable doubt that you are guilty.

Amy Merrill from Standard Registrar, she gave you a bunch of lists. Let me focus you on one list, one list. Brent Saunders got 343,000 shares, Robert Bertolini got 130,000 shares, Tom Koestler got 109,000 shares, Ken Banta got 101,000 shares. That's in evidence, ladies and gentlemen.

Who are those people? The four people who make up the universe that surround Fred Hassan his whole life, all of these people are major players in Retrophin but Fred Hassan, despite that email we saw yesterday, tells you, nah, I don't remember, I never heard about Retrophin, my daughter made $1.8 million but I never heard about Retrophin. It's a lie, ladies and gentlemen.

Let's talk about Evan Greebel. Evan Greebel is the lawyer for Martin and Retrophin and MSMB and MSMB Capital from the day one to day at the end. Mr. Marshall, the witness from Texas, told you that he was a lawyer and he knows the firm that Evan is a partner in and it's one of the most respected firms and Evan is a respected lawyer and he says to you, that gave me comfort that the agreement was okay, I took comfort in the knowledge that Martin was represented by a real lawyer in a real law firm. Why isn't that something that Martin could take comfort in. When you listen to the Court's reliance on counsel charge, you will conclude that as to Count Seven and Eight, Martin has a valid reliance on counsel defense. It doesn't end the discussion but you have to factor that into the equation.

Remember, Marshall who told you this was himself a substantial litigator for many, many years.

Let me show you how many other people who said that, ladies and gentlemen. Marshall, of course, page 2513:

"And that also gave you some comfort because you knew the firm, Katten, to be a very well respected law firm?"

"Answer: That's right."

Massella, Massella introduced Greebel, Massella is the son-in-law of Citrin Cooperman, the accounting firm that refers Martin to Evan Greebel and Evan Greebel starts working as a result of the Massella introduction.

"And at one point Evan Greebel essentially put you in touch with Martin Shkreli?"

"Well, he and the partner at Marcum."

Marcum, Marcum that did the evaluations, they weren't called as witnesses by the government.

Massella: "And you knew that he and other lawyers at Katten were working with Shkreli during the reverse merger process?"

"Answer: Yes."

"And in regard to the preparation of the super 8K, you knew Evan Greebel was involved in that, correct?"

Aselage: "Did you tell the government that when -- that while you knew that Greebel backed up Shkreli it meant a lot to you because he was an independent counsel from an outside firm that you knew at the time?

"Answer: That is correct."

"Question: The outside firm Katten Muchin?"

"Answer: Correct."

"You knew at the time that was a fairly respected law firm in New York City?"

"Answer: I didn't personally know them, I was told they had a good reputation."

David Geller: "You testified that you came to learn Mr. Greebel was involved on behalf of Retrophin in the negotiations with you and the terms are finalized in your agreement?"

"Answer: Correct."

"You recognized him as a lawyer who was working for Retrophin?"

"Answer: Retrophin, MSMB, yes."

"Question: And I think it would be fair to say that you told the government that you were comforted by the fact that Evan Greebel was from a big firm?

"Answer: Yes."

"Question: And that helped calm you to believe that you would ultimately be repaid, correct?"

"Answer: I didn't know if I would be ultimately repaid but it helped calm me."

Why can that fact calm the investors into believing that these agreements were legal when many of them had their own lawyers working on these agreements as well and yet, if Martin Shkreli has Evan Greebel as a lawyer, even if he fights with him on occasion, the government said, oh, Evan Greebel is

a bad guy, Martin Shkreli has no right to rely on him. This was during the period when everybody was relying on Evan's skill. And Sara Hassan had her own lawyer, when she got the PPM she had a guy named Levy who reviewed the PPM with her; when she got her agreement, she had a Mr. Kornreich from a law firm Proskauer, who she says was a prominent law firm, reviewed the agreement with her. Richard Kocher had a lawyer who reviewed the agreement with him.

Richardson: "Now, you talked a lot on your direct about Evan Greebel."

"Answer: Yes."

"Evan Greebel is a partner at Katten?"

"Yes, which was our external counsel."

"Question: You said he's external counsel but he was present for the board meetings?"

"Yes."

Further down: "And he also was someone that was a great amount of email traffic that would go on with Retrophin?

"Answer: Yes, he was copied on virtually everything."

Evan Greebel was copied on virtually everything, according to Richardson.

"And was he involved in the capitalization tables?"

"Answer: Yes."

"Was he involved in the information that was given

to board members in preparation for the meetings?"

"Answer: Yes."

"Did Martin refer legal questions to Evan, in your experience?"

"I certainly saw a few referrals, yes.

"Either through email or in conversations with Martin, would Martin say to you: I need to run this past Evan?"

"I think on one or two specific instances he probably did."

"Well, certainly again in terms of my own -- my own -- Richardson -- topping up off my own stock, that was one area that he said I had to get back to Evan on.

"Question: Because he wanted to be appropriate, correct?"

"Answer: Yes."

Investor after investor and even Richardson, when I started this case, it seems like a long time ago, but one of the things I said to you was the statement that maybe doesn't cut it in a criminal case, you need proof beyond a reasonable doubt, so let me tell you what the maybe-s we have.

Maybe Martin could have been more responsive to the needy investors who griped about not getting their calls or emails answered more promptly.

Maybe because of the way his mind operates at warped

speed he was doing too many things at the same time and some of the investors were losing patience.

Maybe Martin had a right to believe that everything Greebel did was legal and proper because, like the investors, he saw him as a top lawyer from a top firm.

Maybe Martin had a right to rely on lawyers representing the investors as Sara Hassan, for example, and Lindsay Rosenwald and Darren Blanton, they all had lawyers negotiating these agreements that the government now says are frauds. Well, if they say Evan is not real so that's why he negotiated them, what about the lawyers on the other side, why were they advising their clients that this was okay. So, maybe, maybe, maybe all of those lawyers are just corrupt or maybe they're not and maybe by vetting these agreements they were implying and saying and suggesting that they were perfectly legal.

Maybe Martin did not need board approval for consulting agreements or maybe he believed he had board approval because Marc Panoff, the company CFO, who did not testify, sent them to Richardson and Aselage before board meetings and those agreements are referenced in SEC filings signed by them, so maybe Martin had a right to assume that there was nothing wrong with these agreements.

Maybe Mulleady and Brent Saunders told investors the truth or exaggerated to them or lied to them but neither of

them has been called as a witness, neither of them has been called as a witness and it was they who encouraged the investors to invest. Why? Because they were making a fortune on Martin's stock tips and that's in the record.

Maybe Kevin Mulleady and Brent Saunders got so many shares of Retrophin stock because they were instrumental in Retrophin getting so much investor money.

Maybe Martin honestly believed that the assets under management was $35 million because he included and had a good faith basis to include the $30 million that he put into Chelsea Pharmaceuticals for Josiah Austin. And just remember that's not a figment of anyone's imagination because when I cross-examined Lee Yaffe, Lee Yaffe told you he knew Austin, he knows Austin was investing with Leerink Swann and Lee Yaffe told you that he believed that Martin was running, that's the words he used, was running Josiah Austin's money.

If Martin had a good faith basis to believe that he was running Josiah Austin's money, then Martin is not lying when he says, "I have assets under management." What definition of assets under management have you been given in this case? You will not be given any. It's a word, it's a term of art, but if I say to you I am running your money and therefore I am including it in my assets under management, maybe I have a good faith basis to believe that.

Maybe the reason all the investors and Aselage and

Richardson commented on the defendant as being somewhat unstable or strange or Rain Man or depressed or suffering from anxiety is because they saw Martin's mind work differently and I submit that you may consider their comments when you focus on the question of intent or good faith.

Maybe Martin had the concept of Retrophin in his mind before he discussed it with others or do you think he got up one morning and just formed a pharmaceutical company. You saw how many people have to be involved in just making a bag of potato chips, think about starting a pharmaceutical company to treat diseases that no one else is treating. You don't wake up one morning and say I'm going to do this. It takes planning in your mind, it takes effort, it takes 24/7 for two years.

Maybe the government's bank charts are worthless because all they show are bank balances and they completely ignore the value of Retrophin stock that Martin puts into the equation. They cannot ignore that. It's the whole case, ladies and gentlemen. Why do the values go up, because Retrophin is going up, otherwise the values would drop or they would disappear completely. When Martin tells you you have $139,000 in value in your account, he is factoring into the equation your pro rata share of Retrophin that he then gives you. Why do people get shares like 35,714, why are those strange numbers, because in Martin's mind that's the fair

amount when you factor in the pro rata value of Retrophin. You can't just ignore that. He didn't make these numbers up and today the numbers are all good. Even a genius who's a visionary, it's hard to imagine that you could predict that two years later everything I said would be 100 percent accurate and all of the people would not only get their money back but would get their money back with an amazing profit. Some of these investors said to you, this is the greatest investment I ever made, I have never had this kind of return. David Geller told you that. John Neill told you that in words or substance. And Darren Blanton, he turned a million into five million and he's still sitting on hundreds of thousands of shares of Retrophin.

Maybe every statement the government claims is a lie or is false is in Martin's mind true and when said by him, he had a good faith basis to believe because, according to Aselage, Aselage said to you, I really think when Martin says something he believes it. If Martin believes it when he says it, then on the defense of good faith you must acquit him.

You know, something happened in this courtroom and I'm going to be finished in ten minutes and I'm going to ask the Court for a break but I need to finish before we break so please bear with me, you know what happened in this courtroom at times wasn't fair, you know if someone walked into this -- this is a beautiful courtroom, if you look around, it's really

stunning in terms of its design, marble and wood and polished woods and screens and electronic equipment, it really is state of the art and very handsomely made. It's nice, it's impressive, it should be that way for the United States court. But imagine someone coming in here and throwing a pizza against the back of the marble splashboard, the pizza would fall off but there would be a terrible mess, the toppings would stick there, the cheese and the sauce, and it would leave a terrible stain and then when anyone came into the courtroom, the first thing they would say is not what a nice courtroom, they would say what is that crap on the wall, it looks terrible and it would change the whole impression of what this courtroom is and how it looks like.

They did that to Martin Shkreli, every day you got a limiting instruction from the Judge, you can't regard this, you can't regard that, this is stricken, that is stricken, every day we had a limiting instruction properly given to you by Judge Matsumoto when evidence was put into the record that had no business in the record and was prejudicial to Martin. I'm not going to go through reading them, it probably wouldn't be appropriate, but you got a limiting instruction, thank you, Judge Matsumoto, every day to caution you that there are charges in this case and stuff that isn't charged is not something you can use to convict Martin Shkreli. Throw the pizza toppings at Martin. Even if it's withdrawn, even if

it's removed, some of the stuff sticks and then maybe you look at Martin in a different way, maybe the presumption of innocence suddenly gets darkened and stained and maybe for a minute you stop thinking of him as presumed to be innocent and instead you say incorrectly, in violation of the rules and your oath that Martin is not presumed innocent, look at all the stuff that they're throwing at him. So, thank God you have an impartial judge who tells you hit the erase button, who tells you that part is stricken, who tells you again and again and again, you've written them down or you've listened to me, you know I'm being accurate. That's not right.

So, Martin Shkreli didn't testify and Her Honor will instruct you that a defendant never has the obligation to testify and that it is something that you cannot use against him and you cannot even draw any inference from it and you may not even discuss that fact in the jury room because that's the way it is in every criminal case, the government always has the burden of proof and a defendant doesn't have to call any witnesses and a defendant doesn't have to offer a defense because if they fail to prove him guilty beyond a reasonable doubt, you must find him not guilty and you cannot use the fact and you know what, that rule is in every single case but in particular in this case what a wonderful rule, thank God for that rule, because if all of the people are right about Martin Shkreli, if all of the people who commented on his

mindset or his ability or his depression or his anxiety or his mental stability are right, then this rule is needed to protect someone like Martin Shkreli. He doesn't have to testify, he doesn't have to prove that he is innocent. Nobody normal, completely normal has to testify and certainly if people say you're Rain Man or you're unstable or you're depressed or you're taking medication, God help us if you have to prove your innocence rather than they have to prove you being guilty.

Look at the lists of the documents, all of the money that's in this case and look at it and you will find that little, if any money goes to Martin Shkreli during the period in question and the judge will tell you that the fact that someone did not profit from a fraudulent scheme is not dispositive but it's a factor you can consider.

(Continued on next page.)

MR. BRAFMAN (Cont'g): Why is he doing this? Most people commit fraud to become rich or steal money or live a good lifestyle, that's the way it normally is. Ladies and gentlemen, there is nothing normal about how Martin Shkreli did this, confined to a room. The Government -- the Judge will tell you, the Government will tell you -- the Judge will soon give you instructions and the Judge will tell you that you cannot allow anything the media said or printed or wrote or filmed, you're not allowed to use that in anyway. You promised us when you were chosen you would not use anything out of the courtroom. We trusted you. Hundreds were excused because they said, I can't be fair. You said you could be fair. Every one of you swore to that. I'm calling you on that. My client trusted you. I trusted you. We all trusted you, both sides and the Judge. You are the exclusive judges of the facts.

The Government can't tell what you facts you must use. I can't tell you what facts you must use. I can only suggest to you what you should do with certain facts. Not even the Judge can tell you what specific facts you should credit or not credit.

Proof beyond a reasonable doubt is proof that a reasonable person would not hesitate to rely on in an important decision in your life, that's what the judge will tell you in substance. And her definition controls, so I'm

shortening. I'm shortening it, but I'm not distorting it. Reasonable doubt is a doubt in which a reasonable person can say this would cause me to hesitate an important decision in my life.

Would you rely on Mr. Yaffe's testimony in an important decision in your life? Or would you say, you know what, he admitted lying so many times I can't believe him, I can't go to bed thinking he is telling the truth. He has a reason now to hurt Shkreli, so he's not prosecuted for all the things he said.

David Geller said, I didn't read anything, I briefed them. I listened to Al, who made a fortune. Can you rely on that testimony beyond a reasonable doubt to convict him?

The Court will tell you that the presumption of innocence alone, unless overcome, is sufficient to acquit Mr. Shkreli. And the Judge will tell that you the burden of proof never shifts to the defendant, who doesn't have to call any witnesses. And that if the Government fails to prove every element of a charge beyond a reasonable doubt you must find Mr. Shkreli not guilty. And when you get to reasonable doubt, the Judge will tell you it's a doubt that a reasonable person, after weighing all of the evidence, is a doubt that would cause you to hesitate. Proof beyond a reasonable doubt, means that you would not hesitate to act on that proof. This case has so many reasonable doubts you must hesitate. You

must hesitate.

Because the defendant is presumed innocent the defendant has a defense of good faith, which they must disprove beyond a reasonable doubt. And they cannot do that. They have not done it, and they can't do it with any further argument that you may hear.

And if there is bias, if a witness has a bias, you may consider that, you may consider that.

There is a special instruction with respect to Mr. Yaffe. He has a non-prosecution agreement because he's aligned himself in that regard with the Government. The Judge will tell you the testimony of a witness who has been promised that he will not be prosecuted should be examined by you with greater care than the testimony of an ordinary witness. You should scrutinize it closely to determine whether or not it is colored in a way as to place guilt upon the defendant in order to further the witness's own interests. You have to scrutinize Mr. Yaffe's testimony more than you would anybody else's in this case. If you scrutinize it normally, you have to kick it to the curb if you read all the testimony. But the Judge will tell you, you have to scrutinize it more carefully. And if you scrutinize it more carefully, ladies and gentlemen, you can't accept it.

The Judge will tell that you when someone acts willfully, it's unlawful with an intent to do something the

law forbids, that is to say with a bad purpose, to disobey or disregard the law. What bad purpose? What bad purpose have they demonstrated with respect to Martin Shkreli? Did he look to profit? No. Did he look to become a big shot? No. He wanted to find a cure, and he did it. That's not a bad purpose; that's a good purpose.

You must next determine, the Judge will tell you, or we'll tell you, that the fact that someone misstated something that was material, there is a substantial likelihood that a reasonable investor would find the misrepresentation important in making the investment decision. Not every lie is material even if it's a lie. It has to determine whether they are going to be interested in doing the investment or not.

They didn't read the private placement, what Kevin Mulleady told them, or what Alan Geller told them, or what somebody else told them does doesn't matter. If you had find the defendant profited from the alleged scheme you may consider that in relation to intent. There is no profit. So when you consider that on the question of intent, we win on that argument.

The Judge will tell you that you must use common sense in deciding whether a defendant possessed or lacked intent to defraud, do not limit yourself to what the defendant said. You also look at what he did and what others did in relation to the defendant and in general everything that

occurred. Well, what the defendant did is build a company that now is finding drugs and cures, and his work is good. It wasn't with a bad intent, ladies and gentlemen.

The Judge will tell you that on wire fraud, the loss of right to control your assets only constitute deprivation of money or property if the scheme could cause or did cause tangible economic harm to the victim. So the Government might say, well, you know Sarah Hassan had to wait a year before she could spend her $20 million trust fund. She got her money then waited two years before selling the stock. Blanton still has the stock. McNeil still has the stock. Other witnesses waited months after they got their money hoping it would rise so they would make more money. They weren't caused economic harm.

The Judge will charge you on good faith. The standard on good faith is the Government must disprove, the Government must disprove the defendant's good faith beyond a reasonable doubt. I don't have to prove he acted in good faith. I can say it. We can argue it. But they have to disprove that he acted in good faith.

With respect to wire fraud the Judge will tell you that an intent to defraud for the purposes of wire fraud means to act knowingly with specific intent to deceive for the purpose of causing financial loss or property loss to another. To be guilty of wire fraud you have to do it with intent to

cause specific loss, financial loss. Who lost anything? Nobody. If they say to you, well, I lost the right to use my money in the way I wanted to use if for a couple of months while Martin was ignoring my e-mails. I ask you to consider that he ignored the e-mails because he was building Retrophin. I ask you to consider what these people had, what these people invested, and what these people did after they got their money back.

I'm done. I'm exhausted. I'm tired. But I'm pleased.

I'm pleased because I take by looking at you I hope all of you or at least some you understood that what I was saying is not just Ben Brafman waxing eloquently or ineloquently. It's Ben Brafman commenting on the evidence. Asking a group of citizens, like you, to convict Martin Shkreli of a felony, they must bring you clear and consistent, and defensible, credible evidence. They cannot throw stuff against the wall and hope some of it sticks so that you use that and the vulnerability of this particular defendant, I submit, and use it to convict him. It's really that simple.

They have not earned, the Government has not earned to the right to ask you to make him a felon. They have not earned that right in a public courtroom where the warts and flaws of witnesses were exposed, not on direct examination but on cross-examination, and now a reasonable doubt is

circulating in the atmosphere like a bunch of drones that require a finding of not guilty.

Both sides obviously want to win. But when a defendant, I submit, who has been accused but has not been proven to be guilty is acquitted everybody wins. Because that is a just verdict. That's the right verdict if they fail to prove beyond a reasonable doubt. So when you're foreperson announces the verdict that I hope is not guilty, don't slink away from that verdict, be proud of that verdict. Be proud to say, I gave Martin Shkreli a fair trial even though he was Martin Shkreli. And I am proud to announce that verdict because it's the right verdict under the facts and under the evidence and under the law. Proud of the fact that despite the controversy you stood tall and responded to the oaths you gave us when we started.

I just want to tell you something which you may find a little bit upsetting but I'm asking to you consider it in the manner in which it's intended, not to as an upfront but get you to be thinking.

Every one of us knows an oncologist or two. An oncologist sometimes has to give very, very bad news. Sometimes they have to tell you, you've got cancer. And that's a terrible thing to tell anybody. But you know what, before an oncologist makes that announcement and tells you, as a practical matter, your life may be over or is certainly

going to be different, they have a biopsy; they have a blood work; they have an MRI; they have a CAT scan; they are able to touch you and feel whether there is a lump or whether there is a discoloration of the skin; they can give you every test that there is. And when all of tests come in and all the blood work comes in they can say, I'm sorry to tell you you have cancer. And today, thank God, because of medical research many cancers are curable maybe not always a death sentence.

When you deliver a verdict of guilty, God forbid, that's forever. That's A. Regardless of the other consequences, you're a felon forever.

You don't have blood work and tests. There is no forensic evidence. There is no DNA. There is no fingerprints. There is nothing in this case except the testimony and the exhibits. So when you decide whether someone is guilty and they have been established guilty beyond a reasonable doubt, all you really have is what we use when we pick a jury, common sense, honesty, a fair evaluation of the evidence, respect for the laws that have been in place for the last hundreds of years, not just for Martin Shkreli but for everybody.

I told you in my opening statement that when the long, strong arm of the Government reaches out and tries, as a practical matter, to change someone's life or end someone's life, they have to be right. They have to come to you beyond

a reasonable doubt. They have to convince you with evidence beyond a reasonable doubt. And I don't think, most respectfully, that if you listen to all of the testimony that they have done that.

You know the Judge is going to give you the rules of law that you have to apply. And the Judge is the law. The Judge tells you what the law is and you're required to apply the law, whether you agree with it or not. And I do hope a apply the law. I think if you apply the law you'll see the sections of law that I quoted in substance I did accurately, and the Judge will include those instructions in her instructions.

But on certain things you are the law, you're the judges of the facts. Nobody can tell you who to believe. Nobody can tell you what weight to give evidence. Nobody can tell you how long you should deliberate. Nobody can tell you how you should conduct your deliberations, except to say be fair and listen to the opinions of each other. No one can say how long you should deliberate, and whether you deliberate for three hours or three days or a week, however long it takes to reach a verdict. Nobody can come in there and say you have to hurry, do this or do that. What goes on in that jury room is yours; in that respect, today you are the law. I ask you to respect that part of the law.

And when I sit down Ms. Kasulis after the break has

an opportunity to give a rebuttal summation. I hate that rule. All of us want the last word. Every one of us, when we argue with a friend or spouse or child or significant other, you want to have the last word. It kills you if the conversation ends and they put a piece of tape over your mouth and you got to walk away even though you have great things to say, but that's the rule.

So what I need to do is two things, one, I need to prepare you. I don't know what she's going to say. She can't unwind the testimony, on that I have no concerns. She's not going to show you another several hundred exhibits like flashcards so you see them for a second and you have no idea what you're looking at. Maybe she'll tell you, Mr. Brafman is a good lawyer. He tried to distract you from the facts and the fact are that Martin Shkreli is overwhelming guilty. If she says that, thank you. If you're on trial and it's this important and you're Martin Shkreli, you should have a lawyer who knows how to defend you. So I'm not ashamed, if that's what she says or if that's what you conclude. Or even if she says I'm a bad lawyer, but I didn't try to distract you. I may have used to bag of potato chips to make a point, but it was a point worth making. If you make a pharmaceutical company with effort and time and brilliance, you don't turn around one day and say here is a bag of potato chips not knowing how the chips or the bag got here. There is no

distractions. And every once in a while if I used a metaphor, if I made you smile, if on occasion we couldn't smile I would drop dead from the tension in this courtroom if we couldn't lighten the atmosphere every once in a while. But not to suggest that what we're doing is not of serious. This is a serious as it gets, ladies and gentlemen.

So whatever she says, whatever she says, here is what I want you to do, first of all listen and respectfully. I'm sure she will like, Ms. Smith, give you a very eloquent, well-prepared rebuttal. But she doesn't have the last word. You do. In this argument you have the last word.

I hope that the last words are not guilty. Thank you very much.

THE COURT: Thank you, Mr. Brafman. We're going to give the jurors a break at this time. Please, it's not yet the time to discuss. Keep your thoughts and feelings to yourself. Keep your mind open. You'll hear rebuttal and we'll resume in about ten minutes. Thank you.

(Jury exits the courtroom.)

THE COURT: All right. So during this break, counsel, why don't we try to figure out the addition to the instructions that the Government had requested. I'm thinking that perhaps on page -- it's the instruction regarding verdict and deliberations, there is some language in that instruction.

MR. BRAFMAN: May I step out for a minute while they

are talking?

THE COURT: Of course.

(Brief recess.)

THE COURT: Have we worked it out?

MR. SRINIVASAN: The Government version is on the top and the defense on the bottom, page 83.

THE COURT: We agree that page 83 would be an appropriate spot. Let's see what you both want.

Well, you know, I think this instruction was proposed to correct, or not correct but to address, a statement that appears to contradict my instruction. The question is whether you want a more specific instruction directed to what was said during closing or whether it should be more general and not referential to the comment. So I'll hear from Mr. Agnifilo why the Government's proposal, or Mr. Brafman, why it is not appropriate. I'll share this with my clerk.

MR. AGNIFILO: I don't think the Government's proposal is in anyway inappropriate. Think it's a matter, it's a stylistic matter. And I don't know that it helps necessarily, even I think what we're trying to accomplish is to highlight, to put in society. I think it is possibly a more effective instruction just to say any consideration because that really is the state of the law. I know the Government wants the added portion to say that they want to

make sure there is no impact on possible society in the future. Honestly, I don't feel terribly strongly either way. I think our instruction is cleaner, and basically is a truthful statement of the law and solves the problem that the Government has without going back into the subject matter.

So that's why we propose it the way we did. I don't think the Government's proposal is inappropriate in anyway. I just think ours is better, is more effective.

MR. SRINIVASAN: Your Honor, our position is that your Honor's instructions do contain that the general and broader proposition. But given the specific comments that were made that Ms. Smith highlighted earlier today, that having a more specific clarifying instruction I think would be appropriate in this case to address the issues that we have raised, that's why we put in the bit about society, addressing various comments about visionary and throwing the person on the heap. I think it addresses the issues that arose and gives the jury some additional guidance.

THE COURT: There seems to be a bit of suggestion that as a visionary of the generation, and how the generation would suffer consequences if Mr. Shkreli were no longer able to apply his extreme intelligence to developing orphan drugs that could help society in general.

What if we added the sentence, "You cannot allow consideration of the punishment that may be imposed upon a

defendant or the consequences on society if he is convicted to influence."

MR. AGNIFILO: That's fine.

MR. BRAFMAN: When did I say "society"?

MR. AGNIFILO: Our concern is that it's incorporating a concept, it's interpreting what I think the Government thought that Mr. Brafman was saying, but he didn't actually say it.

THE COURT: Somebody must have the transcript that we can search.

MS. SMITH: He said, "Make somebody a felon for the rest of his life is a very, very tough decision. And when you're dealing with anyone you have to be right. But when you're dealing with maybe one of the most of the extraordinary minds of this generation you need to be right before you snuff that out." That's one.

And then second, "It requires you to understand how special his mind is, and how careful you need to be before tossing it in a heap."

THE COURT: Then I would agree with the defense that we can say --

MR. BRAFMAN: Thank you.

THE COURT: -- "May be imposed upon defendant if he is convicted" -- let me see. Is this acceptable, "Under your oath as jurors you may not consider any consequences including

the punishment that may be imposed upon a defendant if he is convicted."

MR. AGNIFILO: That's fine with us.

MS. SMITH: That's fine.

THE COURT: What we're going to do then is to insert this additional language at page 83. We will relabel the jury instructions as Court Exhibit 5 and the verdict sheet is 5A. And we'll give you an opportunity to see it. Hopefully we can then charge the jury.

MR. AGNIFILO: Sounds good.

MR. SRINIVASAN: Thank you, Judge.

THE COURT: Why don't you take a quick look at the language.

MR. BRAFMAN: That's fine by the defense, your Honor.

THE COURT: All right. Thank you.

Is the Government all right with it?

MR. SRINIVASAN: Yes, your Honor.

THE COURT: We'll make that change. Are you ready to proceed, Ms. Kasulis?

MS. KASULIS: I am.

(Jury enters the courtroom.)

THE COURT: All our jurors are present. Please have a seat.

Ms. Kasulis, you may proceed with rebuttal

summation.

BY MS. KASULIS: Thank you, your Honor.

Good morning, everybody. Now Mr. Brafman kept asking during his summation why are we here, why are we here? The answer is simple, you know the answer. The defendant defrauded his investors. Lying to people to get them to invest with you is fraud.

The Judge will instruct you on the law and you will hear that when you lie to people knowingly and intentionally to get their money, it's a crime. And that is exactly what Martin Shkreli did, he knowingly lied over and over again to his investors to get their money and then to keep their money I also want to be crystal clear on one point, it doesn't matter if you paid people back years later after you've stolen their money and you've lost all their money, those people are still victims of fraud.

This part of the law was completely lost on Mr. Brafman during his summation. He ignored it. He led you astray.

After Martin Shkreli stole from MSMB Capital and MSMB Healthcare investors, he then stole from Retrophin and its investors to pay back those defrauded MSMB investors. Think about it, ladies and gentlemen, if you rob a bank and then you rob another bank to pay back the first bank, you still robbed that first bank. The evidence is clear. Martin

Shkreli committed fraud eight times over. That is what we have proven beyond a reasonable doubt.

Now in her instructions to you, the Judge will tell you that what the attorneys say is not evidence and there is a good reason for that. Mr. Brafman gave an impassioned summation for his client. He did that. But if you felt like what you heard Mr. Brafman say about what happened in this courtroom over the last month wasn't quite what you recalled those witnesses saying, wasn't quite what you recalled about the demeanor of the witnesses on that witness stand, wasn't quite what you recall the documents saying to you, you are not alone. Mr. Brafman's arguments are just that, arguments. They are not evidence.

I submit to you that the evidence in this case is devastating for the defendant. Mr. Brafman had to make up evidence or skew the evidence. Because when you don't have the law and you don't have the facts on your side, you resort to distractions. Mr. Brafman actually hit that nail right on the head at the end of his summation, distractions. Do not be fooled.

There is an avalanche of evidence in this case. And I don't use that term lightly, an avalanche that buries the defendant. Now faced with this evidence Mr. Brafman has talked about a lot of different things, bags of chips, *Rainman*, rap concerts, touching soft skin, horrible diseases.

But what was Mr. Brafman doing is he was trying to cloud your judgment by appealing to your emotions, maybe your deepest fears, to get you to ignore the evidence, the cold hard facts in this case.

He harped on who did not testify instead of truly dealing fairly with the witnesses who did. The Judge will also instruct you that while the defendant does not have a burden to prove his innocence, he does not, let me be clear, he doesn't have to put on evidence. He does not have to call a single witness. But both the Government and the defense have the same right to subpoena witnesses to testify on their behalf.

Bottom line, ladies and gentlemen, disregard all of those distractions. Focus on what matters, the evidence and the law. Don't let the noise drown that out. Focus on what really matters here.

Now Mr. Brafman spent a lot of time talking about the mythological Martin Shkreli. Let's talk about who is Martin Shkreli. What does the evidence show you? It has shown you that Martin Shkreli is calculating. It's not about just the sheer volume of lies, it's the kind of lies that he tells about things that really matter to people, to investors, that would matter to a reasonable person making a decision about how to invest their money. He knew exactly what he was doing and we have proven his intent to deceive beyond any

doubt.

Mr. Brafman want you to believe that Mr. Shkreli is perhaps the smartest man on the planet. So smart that the rules and the law just don't apply to him. He's so smart that people practically faint in his presence, they throw their money at him, it comes flying out of their pockets. He's so smart and so confident that he built this company in two years while lying on the floor of his office in a sleeping bag that entire time.

But let's consider the evidence, ladies and gentlemen. Of course Mr. Shkreli is a smart man, no one is saying he's not smart. He knew exactly what he was doing. He intended to deceive. He intended to defraud these investors by lying to them. How do you know that? Because for each investor, for each mark, each intended victim, he changed his lies. He changed his lies, that's how you know he doesn't believe what he was saying. Because he lied to each one of those people in the way that he thought would make them give him their money.

Let's talk about Sarah Hassan. He posed as a mentor to her in the hedge fund world. Sarah Hassan who actually graduated from college early. He told her about his stellar track record, his Assets Under Management. He lied to her to take her money, to steal from her.

Let's talk about Steve Richardson. We've heard a

lot about Steve Richardson over the last month. Martin Shkreli told him, I, too, have family struggles. I, too, had to drop out of college because we couldn't afford it. He told Mr. Richardson about his stellar track record, how he was a prodigy. He lied to Mr. Richardson to steal his money. And let me be clear, Mr. Richardson worked really hard for his money, that was very evident from his testimony. He started on the line at American Express. He worked his way up to become the senior vice president of HR at American Express. He worked years to get his money. But according to Mr. Brafman, just because Steve Richardson worked hard and he did well for himself and he made his money, that he can't be defrauded. It's all rich people BS. It's totally fine that Mr. Shkreli stole from him because he's rich. There is no rich person exception to the law. That's insulting. Use your common sense.

The Judge will instruct you on the law. What Mr. Brafman said is not the law. It doesn't matter if you're rich or poor. It doesn't matter if you're sophisticated or not sophisticated. The law treats us all equal. It protects us.

Darren Blanton and the other Texas investors were impressed by Martin Shkreli's knowledge of the health care industry. How he graduated from Columbia early on, very impressive to them. Mr. Blanton talked up all his performance

results, how he thought his investment was doing with Martin Shkreli. All lies. Don't forget, Martin Shkreli had barely any money in the MSMB Capital bank accounts when he went down to Texas to pitch those investors. All of these lies, all of them, they go to bad faith. Martin Shkreli knew exactly what he was doing when he lied to those people to take their money.

Mr. Brafman wants you to believe that Martin truly believes his lies because he's so special. Mr. Brafman mentioned what Steve Aselage testified to on cross-examination about Martin filling in the blanks while meeting with the investment bank on Retrophin on the Valeant deal. Let me be clear, Steve Aselage had nothing to do with MSMB Capital or MSMB Healthcare. He didn't even meet Martin Shkreli until August 2012. He never spoke to these investors. He met Martin Shkreli long after Martin Shkreli blew up MSMB Capital, after Martin Shkreli started defrauding people like David Geller.

Martin Shkreli told all of these people that he had a successful track record, had high Assets Under Management, that they had an auditor, they could get their money out. Why was he lying about these facts, because they matter. They are important. Assets Under Management are important, it's what makes a fund viable. It's what allows a fund to sustain a loss. It shows there are other investors in the fund. Having an auditor is important. If this case illustrates anything,

ladies and gentlemen, it is the importance of having a third-party, independent auditor to check those books.

(Continued on next page.)

BY KASULIS:

And having a successful track record as a hedge fund manager, of course that's important. Who wouldn't want to know that when they're making a decision about investing their money? These are all factors that are important to a reasonable investor, and you can't ignore them. They matter to these investors and they matter to a reasonable person. And that is the standard and that is the law. And if these people invested in Martin, it was a fairytale, Martin, a fraud, and he knew it.

The evidence has shown you who real the Martin Shkreli is. He has been unmasked in the last month in this courtroom. He was not acting in good faith. He lied to these people to deceive them, to manipulate them. He didn't care about them. He just wanted their money.

Why didn't Martin Shkreli just tell them that he had blown up Elea Capital? That maybe, in fact, he was special. Maybe he had sort of a shoddy track record, that he didn't have access to management. So why didn't he just tell them that? Because they never would have invested with him. That's why.

Mr. Brafman asked why Martin didn't just tell the MSMB Capital investors that he had blown up the fund on that Orex trade in February of 2011? He couldn't be sued, according to the PPM if he had just told them that. Why

didn't he tell them that? Because he couldn't, because then he would be a failure. They would know who is he. People wouldn't invest with him anymore, and he desperately needed people to keep investing with him. He didn't have control of Josiah Austin's money. You heard Josiah Austin testify. You read the defendant's statement. That's just a lie.

And then after he blew up that fund, he just kept telling people, Oh, your money's doing great statement after statement after statement just to buy time to figure out what he was going to do. And I want you to look closely at the PPM. We talked so much about that and Mr. Brafman talked so much about it in his summation. Show me where in those PPM's the manager's allowed to lie? Look at every single one. Nowhere in PPM's are you allowed to lie to your investors. Ladies and gentlemen, the evidence is clear that Martin Shkreli doesn't think the rules apply to him and that the law doesn't apply to him. But unfortunately for him, it does.

Now, Mr. Brafman also spent a lot of time during his summation talking about how MSMB Capital and MSMB Healthcare investors weren't defrauded because they got all this money back. That is just another distraction. Use your common sense. You will hear from the judge that success is not an element of the frauds charged, and that means that even if the defendant hadn't been successful in getting the investors' money when he was lying to them, he could still be

guilty of fraud if all of the other elements to the crime are met.

Now, the judge will instruct you that a belief that ultimately everything would work out so that no one would lose any money or that ultimately everyone would make money, does not excuse fraud. And I will say it again: It does not excuse fraud under the law. And that makes sense. Think about it. The defendant wants you to believe that he can lie to investors' faces, get them to trust him, to give him their money to use it any way that he wants, to lose it all, to spend money on his lofty ideas in his head for a company, and that if they get paid back years later after hounding him for their money, somehow he didn't steel from them. It's not a crime. It makes no sense. It's not how the law works. And to boot, you certainly can't steel from a public company and pay back the investors that you stole from. You can't rob Peter to pay Paul. It doesn't work that way.

And just because the defendant got lucky and Retrophin became a success years later through the hard work of many people, not just Martin Shkreli, that he's somehow not guilty of fraud. Again, that is simply not the law. Listen to the judge's instructions.

Ladies and gentlemen, the evidence is devastating for the defendant on Counts 1 through 6. Just devastating. He defrauded these investors with reckless abandon. He is

done. He is done on those counts. You could convict on Sarah Hassan alone. You could convict on the defendant's own words, the bank records, the document that you saw alone. You don't even need the testimony of the investors. That is how strong the evidence is in this case.

Now I also want to speak to you about another myth, the myth of Retrophin. We asked about who Martin Shkreli is. Well, let's talk about Retrophin. What is Retrophin? If you talk to the defendant, Retrophin is $20 million. Is it $40 million. Is it $80 million. All a complete and total fiction, a figment of the defendant's imagination. And he knew that. He's a very smart man. You don't value a company at $80 million and then draft a liquidation press release at the end of December in 2012 announcing his demise for the company. You don't do that. You don't say your company is worth $80 million when you have $11,000, $11,000 in the bank account at the end of December of 2012.

Mr. Brafman talked about a plot of land and a mansion on that land and it's got impatents, it's a mansion. What Martin Shkreli wants you to believe is if you buy a plot lot of land for $10,000, and then you stand back, the street, you look at the plot of land and you think, you know what, I'm going to build a house on this plot of land and it's going to be an 80 million-dollar house. But you don't even take one step to put a brick down, you do nothing. That you

can then sell that plot of land for $80 million. That's what the defendant wants you to believe. It's absurd. It's ridiculous. If that's how the defendant was justifying those amazing returns for MSMB Healthcare investors, there is no excuse for his behavior. None. He is smart, he knew he was lying to those people.

Retrophin, ladies and gentlemen, was nothing more than Martin Shkreli's personal piggy bank. It was his way of getting out from under his fraud.

Martin Shkreli and others, including Evan Greebel schemed to steal money from Retrophin, Retrophin, the company we've heard so much about. The way that Martin Shkreli was to give back, use all his genius for the good of society, to cure these terrible crippling diseases. Martin Shkreli did not cure PKAN. There is no evidence in the record for that. These drugs that we've heard about, Martin Shkreli didn't create those drugs. Retrophin bought those drugs.

What did Martin Shkreli do with Retrophin? He stole millions of dollars from Retrophin's shareholders and their investors.

And ladies and gentlemen, remember, Retrophin did not have millions of dollars lying around for the defendant to steal.

You heard from Steve Aselage, the current CEO of Retrophin, what did he tell you? What could have been done

with that money? It could have gone to developing drug that is really could have helped people. When people invested in that 10 million-dollar pipe in February of 2013 did they think two of the $10 million was going to go to pay back the people that he defrauded when he had nothing to do with Retrophin? Absolutely not.

You heard testimony and saw documents that the defrauded MSMB investors were threatening to sue the defendant. To go to the SEC to get the money that Mr. Shkreli told them was owed to them in cash and in shares.

Martin Shkreli told them in September of 2012 that he had doubled their investment. He told them that they were owed far more than MSMB Healthcare ever invested into Retrophin and MSMB Capital never invested in Retrophin. And this new theory we heard that they got vested shares in 2012. Where were those shares in 2011 when he was sending out all those performance reports after he blew up the fund? They were nowhere. It's a distraction.

The defendant -- the defendant promised those people that money. Not Retrophin. These investors didn't have any valid claim against Retrophin. Retrophin didn't do anything wrong. It wasn't Retrophin's responsibility to protect Martin Shkreli from dealing with the consequences of his crime. That's not Retrophin's business decision. The company's not responsible for that.

Now, Mr. Brafman said a lot in his summation about Martin Shkreli is MSMB, MSMB is Retrophin, it's all the same thing. They're all interchangeable. But again, that is not the way the law works. Retrophin is a public company. It has investors. It has shareholders. Martin Shkreli is not the only shareholder of Retrophin. That is the truth, the cold-hard facts that he cannot get away from.

You will hear from the Judge that Mr. Shkreli had the duty to the company to act in Retrophin's best interest. Not his own. And he had that duty all along.

And how do you know that Mr. Shkreli knew that he had that duty? We all know that document, Government's Exhibit 255 when Mr. Greebel reminded Mr. Shkreli about that duty, I think we all remember what he said. F-that. F-that. Because it's all about Martin Shkreli. It really just sums it all up, doesn't it?

And I want to talk briefly about these settlement and consultant agreements. The evidence is crystal clear that Martin Shkreli and Evan Greebel stole from Retrophin through those agreements. Again Mr. Brafman distracted you. He was not careful with the evidence. He was not true to the evidence. How do you know that these agreements were not on the up and up? Think about it. They weren't true, because Martin Shkreli and Evan Greebel weren't forthcoming with the Board of Retrophin. They hid these agreements. They hid

these payments.

Remember. Martin Shkreli didn't take any money out of his own pocket through those agreements, zero. Zilch, nothing. He had millions of his own Retrophin shares, but he didn't use those. He used Retrophin's shares. He used the Fearnow shares to pay these people back. He pilfered the company, a company that had been on the brink of collapse.

The Board members could not have been more clear in their testimony. They never approved those settlement agreements. I'll say it again: They never approved those settlement agreements.

And by the time the auditors had discovered those agreements, the vast majority of the cash and the shares were gone, ladies and gentlemen. Gone. Stolen, taken.

And you don't need to just rely on the Board members' testimony to know that there were no approval to those agreements. Because again, these are Martin Shkreli's own words. Government's Exhibit 322. What does Martin Shkreli say in that e-mail?

No Board approval for the settlement agreement. None.

Now, once Marcum discovered those agreements did Martin Shkreli and Evan Greebel sit down with the Board, explain to the Board what these agreements were about? Did Martin Shkreli say, Hey, look guys got myself in a jam. I

defrauded all these people, I might get sued. Can we talk about it, please? Of course the didn't do that. He wasn't honest with them. He didn't tell them the truth. They didn't approve anything.

They trusted Martin. He was the CEO of the company, they trusted Evan Greebel. He was counsel for the company. And Martin Shkreli told them, signed agreements that he was going to pay the company back. If these settlement agreements were totally on the up and up, totally Retrophin's responsibility, why did Martin Shkreli have to pay the company back? It doesn't make any sense.

And you know how else these agreements were a fraud? Because if they weren't a fraud, why didn't they just keep using settlement agreements?

No. Martin Shkreli and Evan Greebel's schemed, they had to change course because they had been discovered and that's how the consulting agreements came about. Retrophin had no business paying those MSMB investors, no business.

Martin was responsible for those payments, not the company.

Darren Blanton was no consultant. The evidence is clear about that. And Lee Yaffe, Mr. Brafman is still maintaining somehow that Lee Yaffe is a cluster headache specialist, that he somehow was going to be worth $200,000 on

cluster headache consultation.

You heard him testify. You saw him. What he told you was corroborated by the evidence, that he conspired with Martin and Marek to steal money from Retrophin through a sham consulting agreement, to get the money back the defendant owed Mr. Yaffe's father for years.

The evidence is overwhelming, ladies and gentlemen, on Count 7.

Martin Shkreli was never bullied. He wasn't outed unfairly from the company. Martin Shkreli wasn't terminated, he resigned. That's the evidence, not what Mr. Brafman told you. The Board removed him as CEO and wanted to keep him on the Board. Martin Shkreli resigned. This whole narrative about the lawsuit needing a felony to terminate Martin Shkreli. It's a distraction. Not what the evidence shows. There is no doubt that Martin Shkreli and Evan Greebel intended to deceive Retrophin's shareholders and investors. Stole money and shares from the company. There's no doubt about it. And again, with respect to this count, Martin Shkreli thought that he is somehow above the law. But we all know that the law applies to Martin Shkreli. He may not like it, but it applies to him.

And I want to just spend two minutes on Count 8 because I submit to you, ladies and gentlemen, the evidence on Count 8 is devastating.

Martin Shkreli controlled 80 percent of the free-trading shares of Retrophin. And he did it to control the price, to control the trading volume. He conspired, he agreed with others to do it. And that is the crime. The conspiracy, the agreement to do it for that purpose. You don't have to show all this trading back and forth. I submit you that on the chart show that these individuals were, in fact, trading, were, in fact, trying to affect the volume of Retrophin stock, the trading of that stock. But the crime is the conspiracy, the agreement to do that with others for that purpose.

And Martin Shkreli was obsessed with the stock price, obsessed with it.

Mr. Brafman, again, misled you. He talked about the definition of an affiliate. You will hear from the Judge that what Mr. Brafman told you is not the law.

Martin Shkreli didn't want the market to tank Retrophin stock. He didn't want to let the public actually value this company. He wanted to value the company. He wanted to control the company. He wanted to control those shares to make sure that stock price stayed up that when he distributed out those shares people might think they have some value in those restricted share pieces of paper they can do nothing with for a year.

That's illegal. It's a crime. I also want to just

talk very briefly about Mr. Brafman's arguments regarding Mr. Shkreli relying on Evan Greebel for advice. Mr. Brafman argued that that is why Mr. Shkreli is not guilty on Count 7 and 8.

Again, ladies and gentlemen, the evidence could not be more clear, Martin Shkreli wasn't relying on Evan Greebel. Evan Greebel wasn't leading him around by the nose. You saw the e-mail. You saw the way Martin treated Evan Greebel. You embarrass me. You're lazy and stupid. More business for another firm. Good job, Even. God bless America.

Martin was the dominate person in that relationship and that relationship was a criminal conspiracy. There is no doubt about it. They worked together to defraud the company, to defraud the shareholders and the investors of Retrophin.

You heard testimony from the Board members that Evan Greebel did not put Retrophin back into the firm. He was looking out for Martin. He was helping Martin be creative about how they were going to steal the company's money so that Evan could keep getting paid. So that the MSMB investors would go away. They wouldn't sue. They wouldn't go to the SEC. They wouldn't expose Martin for the fraud that he is.

The defendant was not lead astray by a trusted legal advisor. There is no support in the evidence for that. None whatsoever. They were co-conspirators. They schemed

together and the evidence supports no other conclusion.

I urge you to go through the evidence, go through the documents, request the testimony if you need it.

Ladies and gentlemen, we have nothing to hide. We have the last word because we have the burden, and I submit to you that we have met that burden in phase. Use your common sense. Don't be distracted.

It's time, it's time for Martin Shkreli to be held accountable for his choices, for his choices to lie, to deceive, and to steal, to take people's money without a second thought, without even a pause. To steal from the Retrophin investors and their shareholders.

There is law, there are rules and they apply to all of us and they apply to Martin Shkreli. He's no different than anyone else. He is not special. The law doesn't see him any differently than it sees you and it sees me and it sees anyone else in this courtroom. The last four weeks have exposed Martin Shkreli for who he really is. A con man who stole millions of dollars. And now it's up to you, it's up to you. It's time to tell the defendant that it's over. It's done, no more. This isn't about winning. It's about the truth. We are confident that you will return the only verdict that is supported by the evidence in the case. And that is a verdict of guilty on all charges.

Thank you.

THE COURT: Members of the jury, the time has come for me to give you instructions. My instructions will be lengthy and I will ask you to please pay close attention. It may take some time to get through all of the instructions, so I do have two options for you. We can provide that you have your lunch break now if lunch is ready. I'm advised that the lunches will not be ready until 1:00, so let's start with the instructions and if you're feeling that a break would be welcome and I think I'll feel that way, too, because I will be talking for a very long time, we will -- a break -- we will break for lunch and I will continue the instructions at that time.

I do want to thank you on behalf of the Court and all of the parties in this case for your close attention, for your honoring your oath to pay attention to the evidence in the case. And to keep an open mind as the case progresses.

So let me start. We will be discussing your general duties as jurors. We will also talk about the charges that are at issue in each of the eight counts in the indictment, and I will also give you general instructions about your conduct as jurors during deliberations. You are about to enter your final duty which is to decide the factual issues at dispute in this case. Please do pay close attention to me and I will go as slowly and be as clear as I

possibly can. I told you at the very start of the trial that your principal assumption during the trial would be to listen carefully and observe each witness who testified. It is an obvious to me and to the attorneys that you have all faithfully discharged this duty, and I do thank you again for your attention in that and your service. I realize that your time in this courtroom has been at some sacrifice to your personal lives and to your work lives.

Now that you have heard all of the evidence in the case and the arguments of each side, it will be my duty to instruct you on the applicable law. As I said, my instructions will be in three parts. First I will give you some general rules about your role and the way in which you are to review the evidence in this case.

Second, I will instruct you as to the particular crimes charged in this case and the elements that the Government must prove with respect to each. Again, beyond a reasonable doubt.

And third, I will give you some general rules regarding your deliberations. Please do not single out any one instruction that I give you as alone stating the law, rather you should consider these instructions as a whole when you retire to the jury room to deliberate on your verdict.

First the general rules and the role of the Court.

You have now heard the evidence in the case as well as the final arguments for the Government and the defendant, Martin Shkreli. My duty is to instruct you on the law and it is your duty to accept these instructions of law and apply them to the facts as you find them; that is, as you determine them.

Just as it has been my duty to preside over the trial and decide what testimony and evidence is relevant under the law for your consideration. On these legal matters you must take the law as I give it to you even if any attorney or witness to you has stated a legal principal different from any that I will give to you.

It is my instructions that you must follow. You should not, any of you, be concerned about the wisdom of any rule that I state. Regardless of any opinion that you may have as to what the law is or may be, or ought to be, it is -- it would violate your sworn duty to base a verdict upon any other view of the law other than that which I give you. Now, your role as jurors, as members of this jury, you are the sole and exclusive judges of the facts. Your rule is to pass upon the weight of the evidence, determine the credibility of the witnesses, resolve such conflicts as there may be in the testimony, and draw whatever reasonable inferences you decide to draw from the facts as you determine them.

In determining the facts you may rely upon your own recollection of the evidence. What the lawyers have said in their opening statements, in their closing arguments, in their objections or in their questions is not evidence. In this connection you should bear in mind that a question put to a witness is never evidence. It is only the answer that is evidence.

Nor is anything that I may have said during the trial or may say during these instructions with respect to a fact matter to be taken as a substitute for you own independent recollection.

What I say is not evidence.

The evidence before you consists of answers given by witnesses, the testimony they gave as you recall it, and the exhibits and stipulations that were received in evidence.

The evidence does not include questions, again, only the answers are evidence. But you may not consider any answer that I directed you to disregard or that I directed to be stricken from the record. Do not consider those answers. Throughout the trial I have reminded you not to conduct any outside research into this case. I've also instructed you to consciously avoid any media about this case or about Mr. Shkreli. Likewise, during deliberations you may only consider the evidence admitted at this trial

and may not utilize any other information obtained outside the courtroom, including but not limited to research on the Internet, opinions or statements of others outside the courtroom, or any other sources.

You must completely disregard any report that you may have read in the press, seen on television or heard on the radio.

Indeed it would be unfair to consider such report, since they are not evidence. And the parties have had no opportunity to contradict their accuracy or otherwise explain them away.

In short, it would be a violation of your oath as jurors to allow yourself to be influenced in any manner by such media.

Because you are the sole and exclusive judges of the facts and do not need to indicate any opinion as to the facts or what your verdict should be. The rulings that I have made during the trial are not any indication of my views of what your decision should be as to whether or not the guilt of Mr. Shkreli has been proved beyond a reasonable doubt. I also ask you to draw no inference from the fact that upon occasion I have asked questions of certain witnesses.

These questions were only intended for clarification or to expedite matters and certainly were not

intended to suggest any opinion on my part as to the verdict you should render or whether any of the witnesses may have been more credible than any other witness.

You are expressly to understand that the Court has no opinion as to the verdict you should render in this case.

As to the facts, ladies and gentlemen, you are the exclusive judges. You are to consider the evidence with impartiality. Your verdict must be based solely upon the evidence developed during the trial or the lack of evidence before you. In reaching your decision as to whether the Government has sustained its burden of proof, it would be improper for you to consider any personal feelings you may have about the defendant's race, religion, national origin sex or age.

It would be equally improper for you to allow any feelings you might have about the nature of the crime charged to interfere with you decision-making process. All persons are entitled to the presumption of innocence and the Government has the burden of proof, as I will discuss in a moment.

The fact that this prosecution is brought in the name of the United States of America entitles the Government to no greater consideration than that afforded to any other party to a litigation. By the same token, it was entitled to no less consideration. All parties, whether the

Government or individuals, are equal before the law. If have a reasonable doubt as to the defendant's guilty, you should not hesitate for any reason to find a verdict of acquittal.

But on the other hand if you should find that the Government has met its burden of proof of a defendant's guilt beyond a reasonable doubt, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

Proof beyond a reasonable doubt must therefore be proof of a convincing character that a reasonable person would not hesitate to rely upon in making an important decision.

Under your oath as jurors you are not to be swayed by sympathy. You are to be guided solely by the evidence in this case, and the crucial question that you must asked yourselves as you sift through the evidence is, has the Government proven the guilt of the defendant beyond a reasonable doubt? It is for you alone to decide whether the Government has proven that Mr. Shkreli is guilty of the crimes charged solely on the basis of the evidence and subject to the law as I charge you.

If you follow your oath and try the issues without fear or prejudice or bias or sympathy, you will arrive at a true and just verdict.

I would like to talk about the conduct of counsel that you may have observed during the trial. It is the duty of the attorneys on each side of the case to object when the other side offers testimony or renders evidence which the attorneys may believe is not properly admissible.

Counsel also have a right and a duty to ask the Court to make rulings of law and to request conferences at the sidebar out of the hearing of the jury. All of those questions of law must be decided by me, the Court. You should not show any prejudice against an attorney or his or her client because the attorney objected to the admissibility of evidence or asked for a conference out of the hearing of the jury, or asked me to rule on an issue of law.

During the course of the trial I may have admonished an attorney. You should draw no inference against the attorney or the client. It is the duty of the attorney to offer evidence and press objections on behalf of their clients. It is my function to cut off counsel from an improper line of argument or questioning or to strike answers that I think when necessary. But you should draw no inference from that. In fact, in this case, I would like to express my deep gratitude to each of the attorneys in this case for their conscientious effort on behalf of their clients and for the hard work that they did so well.

A word about the presumption of innocence and the burden of proof. The defendant, Martin Shkreli, is before you today because he has been charged in a superseding indictment with violations of federal law. The superseding indictment is merely a statement of the charges and is not itself evidence. Mr. Shkreli has pleaded not guilty to the superseding indictment. He is therefore presumed to be innocent of the charges against him and that presumption alone unless overcome is sufficient to acquit him.

To convict Mr. Shkreli, the burden is on the Government to prove each and every element of the charged offenses beyond a reasonable doubt. The burden never shifts to a defendant for the simple reason that the law presumes the defendant to be innocent. A defendant is never required to prove that he is innocent and never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence. Every defendant starts with the a clean slate and is presumed innocent of each of the charges until such time, if ever, that you as a jury are satisfied the Government has proven the defendant guilty of a charge beyond a reasonable doubt. If the Government fails to prove every element of a charge beyond a reasonable doubt, you must find Mr. Shkreli not guilty as to that charge.

What is reasonable doubt? It is a doubt based

upon reason. It is a doubt that a reasonable person has after carefully weighing all of the evidence. It is a doubt that would cause a reasonable person to hesitate to act in a matter of importance in his or her personal life. Proof beyond a reasonable doubt must therefore be proof of a convincing character that a reasonable person would not hesitate to rely upon in making an important decision. A reasonable doubt is not a caprice or the whim. It is not a speculation or a suspicion. It is not an excuse to avoid the performance of an unpleasant duty.

The law does not require that the Government prove guilt beyond all possible doubt. Prove beyond a reasonable doubt is sufficient to convict. If after fair and impartial consideration of all of the evidence, or lack of evidence, concerning a particular charge against Mr. Shkreli you have a reasonable doubt, you must find Mr. Shkreli not guilty of that charge.

On the other hand if after fair and impartial consideration of all of the evidence you are satisfied of Mr. Shkreli's guilt beyond a reasonable doubt, you should find Mr. Shkreli guilty of that charge.

I will now instruct you about the different forms of evidence and how you should consider it. The evidence in the case comes in several forms. First, sworn testimony of witnesses both under direct and cross-examination is

evidence.

Second, exhibits that have been received by the Court in evidence.

Third, certain exhibits admitted in evidence in the form of charts, summaries, or demonstratives. You should consider these charts and summaries as you would other evidence.

And, fourth, stipulations of facts which all the attorneys have agreed. A stipulation means simply that the Government and the defendant have accepted the truth of a particular composition or fact. Here the attorneys for the United States and the attorneys for Mr. Shkreli have entered into stipulations concerning certain facts and documents that are relevant to this case. You should accept these stipulations as evidence and regard those facts as true to be given whatever weight you choose. If evidence was received for a limited the purpose you must consider that evidence only for that limited purpose.

(Continued on next page.)

THE COURT: A word about what is not evidence.

Certain things are not evidence and are to be disregarded by you in deciding this case and determining the facts.

First, the superseding indictment is not evidence and is not entitled to weight in your evaluation of the facts.

Second, arguments or statements by the attorneys are not evidence. That includes the opening statements and the closing arguments.

A lawyer's questions of A witness in and of themselves are not evidence. Only the answer constitutes the evidence.

Objections to the questions or to offered exhibits are not evidence. Attorneys have A duty to object when they believe evidence should not be received. You should not be influenced by the objections or by my rulings on them. If the objection was sustained, ignore the question. If the objection was overruled, treat the answer to that question like any other.

Fifth, any testimony stricken by the court is not evidence.

Sixth, any evidence identified but not admitted into evidence by the court are not evidence. However, testimony regarding such exhibits can be considered.

Seventh, anything that you may have seen or heard

outside the courtroom is not evidence.

Eighth, notes that you may have been taking during the course of the trial are not evidence.

Your verdict must be based exclusively upon the evidence or the lack of evidence in this case.

Now, A word about direct and circumstantial evidence, both of which you may consider. I told you that the evidence has A very sworn -- such as the sworn testimony of witnesses, exhibits, charts, summaries, and stipulations. There are in addition different types of evidence, direct and circumstantial.

Direct evidence is evidence that proves A fact directly. For example, when A witness testifies as to what he or she saw, heard, or observed, that's called direct evidence. On the other hand, circumstantial evidence is evidence that tends to prove A disputed fact by proof of other facts.

To give A simple example, suppose that when you came into the courthouse today, the sun was shining and it was A nice day. But the courtroom blinds, as you can see, were drawn and you cannot look outside. Later as you were sitting here, someone walked in with A dripping wet umbrella, and soon after somebody else walked into the courtroom with A dripping wet raincoat. In case you cannot look outside of the courtroom and cannot see whether or not it is raining, you have no direct evidence that it is raining. But on the

combination of the facts about the dripping wet umbrella and raincoat, it would be reasonable for you to infer that it had begun to rain, and that is all there is to circumstantial evidence.

Using your reason and experience, you would infer from the established facts the existence or the nonexistence of some other fact, whether A given inference should be drawn is entirely A matter for you the jury to decide. Please note, however, that drawing an inference is not A matter of speculation or guess, it is A matter of logical inference.

The law makes no distinction between direct and circumstantial evidence. Circumstantial evidence is of no less value than direct evidence, and you may consider either or both. You may give them such weight as you conclude is warranted.

Now, let's talk about inferences. The attorneys have asked you to infer, on the basis of your reason, experience, and common sense, from one or more established facts, the existence of some other fact. An inference is not A suspicion or A guess, it is A reasoned logical decision to conclude that A disputed fact exists on the basis of another fact that you know exists.

There Are times when different inferences may be drawn from the facts, whether proved by direct or circumstantial evidence. The government may ask to you draw

one set of inferences, while the defense may ask you to draw another. It is for you and you alone to decide what inferences you will draw.

The process of drawing inferences from fact in evidence is not A matter of guess work or speculation. An inference is the deduction or conclusion that you the jury are permitted to draw but are not required to draw from the facts that have been established by either direct or circumstantial evidence. In drawing inferences, you should exercise your common sense.

So while you are considering the evidence presented to you, you are permitted, but are not required, to draw from the facts that you find to be proven such reasonable inferences as would be justified in light of your experience. Here again, let me remind you that whether based on direct or circumstantial evidence, or on the logical reasonable inferences drawn from such evidence you must be satisfied of the guilt of Mr. Shkreli beyond A reasonable doubt before you may convict him.

I'd also like to talk about admissions of the defendant. There has been evidence that Mr. Shkreli made certain statements to this Securities and Exchange Commission, also referred to as the SEC, in which the government claims he admitted certain facts charged in the superseding indictment. I will instruct you that are you to give those statements such

weight as you feel they deserve in light of all the evidence.

Now, during court the concept is the defendant's right not to testify. Mr. Shkreli did not testify in this case. Under our United States Constitution, the defendant has no obligation to testify or to present any evidence, because it is the government's burden to prove the defendant guilty beyond a reasonable doubt. That burden remains with the government throughout the entire trial and never shifts to the defendant. A defendant is never required to prove that he's innocent because his innocence is presumed.

Therefore, you must not attach any significance to the fact that Mr. Shkreli did not testify in this case. You must not draw any adverse inference against him because he did not take the witness stand, and you may not consider or even discuss the fact that he did not testify during your deliberations in the jury room.

Next A word about credibility of the witnesses. You the jury are the sole judges of the credibility or the believability of the witnesses and the weight the testimony deserves. You should carefully scrutinize all of the testimony given, the circumstances under which each witness testified, and any other matter in evidence that may help you to decide the truth and the importance of each witness' testimony. Your decisions in this respect may depend on how each witness impressed you, was the witness candid and

forthright, or did the witness seem to be hiding something, being evasive or suspect in some way? How did the witness' testimony on direct examination compare with the witness' testimony on cross-examination? Was the witness consistent in the testimony given, or were there contradictions? Did the witness appear to know what he or she was talking about, and did the witness strike you as someone who is trying to report that knowledge accurately? These are examples of the kinds of common sense questions you should ask yourselves in deciding whether A witness is or is not truthful.

You should also consider whether A witness had an opportunity to observe the facts he or she testified about. Also, you should consider the witness' recollection of the facts and what they stand up in light of the other evidence in the case.

How much you chose to believe A witness may also be influenced by the witness' bias. Did the witness have A relationship with the government or with Mr. Shkreli that would affect how he or she testified? Does the witness have some incentive, loyalty, or motive that might cause him or her to shade the truth? Does the witness have some bias, prejudice, or hostility that would cause the witness to give you something other than A completely accurate account to the facts that he or she testified to?

Evidence by a witness is biased, prejudiced, or

hostile toward Mr. Shkreli requires you to view that witness' testimony with caution, to weigh it with care, and to subject it to close and searches scrutiny. You should also take into account any evidence that the witness who testified may benefit in some way from the outcome of the case. Such an interest in the outcome creates A motive to testify falsely and may sway the witness to testify in A way that advances his or her own interest. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of this trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony and inspect it with the great care.

This is not to suggest that every witness who has an interest in the outcome of the case will testify falsely. It is for you to decide to what extent, if any, or if at all, the witness' interest has affected or colored his or her testimony.

You also heard evidence of discrepancies in the testimony of certain witnesses, and counsel have argued that such discrepancies are A reason for you to reject the testimony of those witnesses. Evidence of discrepancy may be A basis to disbelieve A witness' testimony. On the other hand, discrepancies in A witness' testimony or between his or her testimony and that of others do not necessarily mean that the witness' entire testimony should be discredited. People

sometimes forget things, and even A truthful witness may be nervous and contradict himself or herself. It is also A fact that two people observing or witnessing the same event may see or hear it differently. Whether the discrepancy pertains to A fact of importance or only A trivial detail should also be considered in weighing the significance.

A wilful falsehood always is A matter of importance and should be considered seriously. If any witness was shown to have willfully lied about any material matter, you have the right to conclude that the witness also lied about other matters. You may also -- you may disregard all the witness' testimony or you may accept whatever part of it you think deserves to be believed. It is not -- it is for you to decide, based on your total impression of A witness, how much to weigh his or her testimony. You should, as always, use common sense and your own good judgment.

You do not have to accept the testimony of any witness who has not been contradicted or impeached, if you find that the witness is not credible. You also have to decide which witnesses to believe and which facts are true. To do this you must look at all the evidence, drawing upon your own common sense and personal experience. As you know, the government called all the witnesses in this case, and there were many witnesses who testified. Mr. Shkreli has chosen not to call any witnesses and you should keep in mind

that the burden of proof is always on the government, and that the defendant is not required to call any witnesses or to offer any evidence, because he is presumed to be innocent.

A word about government employees or law enforcement witnesses. In this case, you heard testimony from A witness who works for the FBI, a law enforcement agency. The testimony of this witness should be evaluated in the same manner as the testimony of any other witness. The fact that A witness may be employed by the government does not mean that you may accord his or her testimony any more or less weight than that of any other witness. At the same time, it is common for defense counsel to try to question the credibility of A witness employed by the government, including A witness who works for law enforcement, on the ground that his or her testimony may be colored by A personal or professional interest in the outcome of the case. It is for you to decide, after weighing all of the evidence in light of the instructions I have given you about factors relevant to determining the credibility of any witness, whether you accept the testimony of A government employee witness and what weight, if any, it deserves.

You may have also heard evidence that A witness made A statement on an earlier occasion which counsel argues is inconsistent with a witness' trial testimony. Evidence of what is arguably A prior inconsistent statement was placed

before you for the limited purpose of helping you decide whether to believe the trial testimony of the witness who contradicted himself or herself. If you find that the witness has made an earlier statement that conflicts with his her or her trial testimony, you may consider that fact in deciding how much of his or her trial testimony, if any, to believe.

In making this determination you may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact or whether it had to do with A small detail; whether the witness had an explanation for the inconsistency and whether that explanation appealed to your common sense.

It is exclusively your duty, based on all the evidence and your own good judgment, to determine whether the prior statement was inconsistent, and if so, how much weight, if any, to give to the inconsistent statement in determining whether to believe all or part or none of the witness' trial testimony.

And during the course of the trial, you heard testimony that the attorneys for the parties may have interviewed witnesses when preparing for and during the trial. Attorneys have an obligation to prepare their case as thoroughly as possible, and in the discharge of that responsibility, they may properly interview witnesses in

preparing for A trial and from time to time as may be required during the course of the trial.

Next, an instruction on the duty that there's no duty to call witnesses or produce evidence or use particular investigative techniques.

Although the government bears the burden the proof, and although a reasonable doubt can arise from lack of evidence, you are instructed that there is no legal requirement that the government use any specific investigative technique or pursue every investigative lead to prove its case. Therefore, although you are to carefully consider the evidence produced by the government, you are not to speculate as to why they used the techniques they did or why they did not use other techniques.

In this regard, I also charge you that all persons who may have been present at any time or place mentioned in the case or who may appear to have some knowledge of the issues in this case need not be called as witnesses. Both the government and the defense have the same right to subpoena witnesses to testify on their behalf. There is no duty on either side, however, to call A witness whose testimony would be merely cumulative of testimony already in evidence, or who would merely provide additional testimony to facts already in evidence, nor does the law require that all things mentioned during the course of the trial be produced as exhibits. I

remind you, however, that because the law presumes the defendant to be innocent, the burden of proving the defendant's guilt beyond a reasonable doubt is on the government throughout the trial, the defendant never has the burden of proving his innocence or producing any evidence or calling any witnesses at all.

You have heard testimony of A witness who has been promised by the government that in exchange for testifying truthfully, completely, and fully, he will not be prosecuted for any crimes that he may have admitted, either here in court or in interviews with the prosecutors. This promise was not A formal order of immunity by the court, but was instead arranged directly between A witness and the government. The government is permitted to make these kinds of promises and is entitled to call as witnesses people to whom these promises were given.

You are instructed that you may convict the defendant on the basis of such A witness' testimony alone, if you find that this testimony proves the defendant guilty beyond a reasonable doubt. However, the testimony of A witness who has been promised that he will not be prosecuted should be examined by you with greater care than the testimony of an ordinary witness. You should scrutinize it closely to determine whether or not it is colored in such A way as to place guilt upon the defendant in order to further the

witness' own interest. For such A witness confronted with the realization that he can win his own freedom from prosecution by helping to convict another have the motive to falsify his testimony. Such testimony should be received by you with suspicion and you may give it such weight, if any, as you believe it deserves.

Now, you have heard evidence about the involvement of certain other people in the crimes charged in the superseding indictment. You may not draw any inference, favorable or unfavorable, towards the government or Mr. Shkreli from the fact that certain persons are not on trial before you or that certain persons were not named as defendants in the superseding indictment or that certain persons remain as coconspirators but not included.

MR. BRAFMAN: Objection.

THE COURT: I'm sorry, I did misread that. Let me start over.

You may not draw any inference, favorable or unfavorable, towards the government or Mr. Shkreli from the fact that certain persons are not on trial before you or that certain persons were not named as defendants in the superseding indictment or that certain persons were not named as coconspirators but not indicted. It is not your concern that these other individuals are not on trial before you, nor should be speculate as to whether or not they were indicted.

You should neither speculate as to the reason --

THE JURY: Judge, we need A break.

THE COURT: All right.

Oh, perfect. I'm going to start with this instruction, just to refresh you. At this time I will give you lunch break, and lunch is waiting for you in the jury room.

Do not discuss the case yet. Thank you very much.

We're going to ask you to return in one hour, so 1:30, 1:35.

(Jury exits the courtroom.)

THE COURT: Just for the record, I just want to state that we have marked as Court Exhibit Number 5 and 5A, the instructions, which incorporate the agreed-upon language regarding both the affiliate that we talked about last evening, and also the instruction about the conflicts of the conviction, and I would like to state here on the record whether Court Exhibit 5 and 5A are acceptable to the government and the defendant?

MS. KASULIS: Yes, Your Honor, it's acceptable to the government.

MR. BRAFMAN: Yes, Your Honor.

MR. AGNIFILO: I have A.

THE COURT: 5A is the verdict sheet.

MR. AGNIFILO: Yes, it's fine, yes, we're good.

THE COURT: Thank you. Have good lunch.

MS. KASULIS: Thank you, Your Honor.

(Government Exhibit Number 5, was received in evidence.)

(Government Exhibit Number 5A, was received in evidence.)

(Continued on next page.)

A F T E R N O O N S E S S I O N

(Time noted: 1:45 p.m.)

(In open court; Jury present.)

(Jury enters the courtroom.)

THE COURT: All the jurors are present. Please have a seat.

I think I did not finish fully instructing you regarding the instruction that you consider only the defendant before you, so I am going to start over and just complete the instruction.

You have heard evidence about the involvement of certain other people in the crimes charged in the superseding indictment. You may not draw any inference, favorable or unfavorable, for government or Mr. Shkreli from the fact that certain persons are not on trial before you, or that certain persons were not named as defendants in the superseding indictment, or that certain persons in not named as coconspirators but not indicted. It is not your concern that these other individuals are not on trial before you, nor should speculate as to whether or not they were indicted. You should neither speculate as to the reason these other people were not on trial before you, nor allow their absence as parties to influence you in any way the deliberations that you will be undertaking. Nor should you draw any inference from the fact that any other person is not present at this trial or

may not be indicted. Your concern is solely the defendant on trial before you, Mr. Shkreli.

Your verdict should be based only on the evidence or lack of evidence as to this defendant in accordance with my instructions and without regard to whether the guilt of other people have or have not been proven.

You may notice, as I read the charges, that the superseding indictment charges that the offenses at issue took place in or about and between certain dates. The proof need not establish with any certainty the exact date of the alleged offenses. The law only requires a substantial similarity between the dates alleged in the superseding indictment and the date established by the evidence.

I will now turn to the charges, the second part of my instructions.

In this part I will instruct you as to the specific elements of the crimes charged that the government must prove beyond a reasonable doubt to warrant a finding of guilt in this case.

I will first summarize the charges alleged in the superseding indictment and ask you to consider only the charges in the indictment and also to consider each count separately.

As I mentioned previously, the superseding indictment is merely a statement of the charges and is not

evidence. Mr. Shkreli is not charged with committing any crime, other than the offenses contained in the superseding indictment. You have heard evidence of other acts allegedly committed by Mr. Shkreli. When such evidence was introduced, I instruct you that Mr. Shkreli was not charged with such acts in the superseding indictment, so please note that.

The superseding indictment contains a total of eight counts. Each count charges Mr. Shkreli with a different crime. The charges in Counts One through Three are related to an entity known as MSMB Capital.

In Count One, Mr. Shkreli is charged with conspiracy to commit securities fraud. In Count Two, he is charged with conspiracy to commit wire fraud. And in Count Three, he is charged with a substantive count of securities fraud in relation to MSMB Capital.

The charges in Counts Four through Six are related to an entity know as MSMB Healthcare. In Count Four, Mr. Shkreli is charged with conspiracy to commit securities fraud. In Count Five he is charged with conspiracy to commit wire fraud. And in Count Six, he is charged with a substantive count of securities fraud in relation to MSMB Healthcare.

In Count Seven, Mr. Shkreli is charged with conspiracy to commit wire fraud. And in Count Eight, he is charged with conspiracy to commit securities fraud both in

relation to an entity known as Retrophin.

You must consider each count of the superseding indictment separately, and you must return a separate verdict on the defendant for each count in which he is charged. Whether you find Mr. Shkreli guilty or not guilty as to one offense should not affect your verdict as to any other offense charged.

During these instructions you will hear me the terms "knowingly," "willfully," and "intentionally." Therefore, I will define those terms for you.

Knowingly. To act knowingly means to act intentionally and voluntarily and not because of ignorance, mistake, accident, negligence, or carelessness. Whether Mr. Shkreli acted knowingly may be proven by his conduct and by all of the facts and circumstances surrounding the case.

Willfully. Certain allegations in the superseding indictment require that the government prove beyond a reasonable doubt that Mr. Shkreli acted willfully. Willfully means to act with knowledge that one's conduct is unlawful, and with an intent to do something that the law forbids; that is to say, with a bad purpose either to disobey or disregard the law. A defendant's conduct is not willful if it was due to negligence, inadvertence, or mistake.

Intentionally. A person acts intentionally when he acts deliberately and purposefully. That is the defendant's

act must have been the product of his conscious objective decision, rather than a product of mistake or accident.

Whether a person acted knowingly, willfully, or intentionally is a question of fact for you to determine like any other fact question. Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that as of a given time in the path he committed an act with fraudulent intent. Such direct proof is not required. The ultimate facts of knowledge and criminal intent, though subjective, may be established by circumstantial evidence based upon a person's outward manifestations, his words, his conduct, his acts, and all surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn therefrom. In either case, the essential element of the crime charged must be established beyond a reasonable doubt.

So let's first talk about Counts Three and Six which charge securities fraud. The defendant, Martin Shkreli, is formally charged in the superseding indictment, and I will begin with the substantive securities fraud charges.

Counts Three and Six of the superseding indictment charge Mr. Shkreli with securities fraud.

Count Three of the superseding indictment charges Mr. Shkreli with securities fraud in relation to MSMB Capital

as follows:

In or about and between September 2009 and September 2014, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant, Martin Shkreli, together with others, did knowingly and willfully use and employee one or more manipulative and deceptive devices and contrivances contrary to Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission, Title 17, Code of Federal Regulations Section 240.10b-5 by: A, employing one or more devices, schemes, or artifices to defraud; B, making one or more untrue statements of material fact and omitting to state one or more material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; and C, engaging in one or more acts, practices, and courses of business which would and did operate as a fraud and deceit upon one or more investors or potential investors in MSMB Capital in connection the purchase and sale of investments in MSMB Capital, directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails.

Count Six of the superseding indictment charges Mr. Shkreli with committing securities fraud in relation to MSMB Healthcare as follows:

In or about and between September 2011 and

September 2014, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant, Martin Shkreli, together with others, did knowingly and willfully use and employee one or more manipulative and deceptive devices and contrivances contrary to Rule 10b-5 of the rules and regulations of the United States Securities and Exchange Commission, Title 17, Code of Federal Regulations, Section 240.10b-5 by: A, employing one or more devices, scheme, and artifices to defraud; B, making one or more untrue statements of material facts and omitting to state one or more material facts necessary in order to make the statement made in light of the circumstances in which they were made, not misleading; and C, engaging in one or more acts, practices, and courses of business which would and did operate as a fraud and deceit upon one or more investors or potential investors in MSMB Healthcare in connection with the purchase and sale of investments in MSMB Healthcare, directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails.

I'm going to now discuss the statute and rules that govern these counts. The relevant statute is Section 10(b) of the Securities Exchange Act of 1934. That law provides in relevant part that:

"It shall be unlawful or any person, directly or indirectly, by use of any means or instrumentality of

interstate commerce, or of the mails, or any facility of any nation securities exchange; B, to use or employ, in connection with the purchase or sale of any security registered on a national security exchange, or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Securities and Exchange Commission, or SEC, may prescribe as necessary or appropriate in a public interest or for the protection of investors.

Based on its authority under that statute, the SEC enacted Rule 10(b)-5 which provides: It shall be unlawful or any person, directly or indirectly, by use of any means or instrumentality of interstate commerce, or of the mails, or of any facility or any national securities exchange: A, to employee any device, scheme, or artifice to defraud; B, to make any untrue statement of a material fact, or to omit to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading; or C, to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

Let me know try to define these elements for you. In order to meets its burden of proof as to Counts Three and Six, the government must establish beyond a reasonable doubt

the following elements of the crime of securities fraud.

The first element: Fraudulent act.

The first element that the government must prove beyond a reasonable doubt is that in connection with the purchase or sale of a security, MSMB Capital for Count Three, and MSMB Healthcare for Count Six, Mr. Shkreli did one or more of the following:

One, employ a device, scheme, or artifices to defraud or; two, made an untrue statement of a material fact, or omitted to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made, not misleading; or three, engage in an act, practice, or course of business that operated or would operate as a fraud or deceit upon a purchaser or seller of any security.

To prove this element, it is not necessary for the government to establish all three types of unlawful conduct in connection with the sale or purchase of investment in MSMB Capital for Count Three, or MSMB Healthcare for Count Six. Any one will be sufficient for a conviction if you so find, but you must all be unanimous as to which type of unlawful conduct you find to have been proven beyond a reasonable doubt.

Let me now explain some of the terms that are used in the law: Device, scheme, or artifice to defraud.

A device, scheme, or artifice to defraud is a plan for the accomplishment of a fraud. Fraud is a general term which embraces all efforts and means that individuals devise to take advantage of others. The law that the defendant is the alleged to have violated prohibits all kinds of manipulative and deceptive acts. The fraudulent or deceitful conduct alleged need not relate to the investment value of the securities involved in this case.

False statement and omissions. A statement, representation, claim, or document is false if it is untrue when made and was then known to be untrue by the person making it or causing it to be made. A representation or statement is fraudulent if it was made with the intention to deceive. False or fraudulent statements under the statute may include the concealment of material facts in a manner that makes what is said or represented deliberately misleading.

The deception need not be based upon spoken or written words alone. The arrangement of the words, or the circumstances under which they are used, may convey the false and deceptive appearance. If there is deception, the manner in which it is accomplished, does not matter.

Next, the words "in connection with." You need not find that Mr. Shkreli actually participated in any securities transaction if he was engaged in fraudulent conduct that was "in connection with" a purchase or sale of securities. The

"in connection with" aspect of this element is satisfied if you find that there was some nexus or relation between the allegedly fraudulent conduct and the sale or purchase of securities. Fraudulent conduct may be in connection with the purchase or sale of securities if you find that the alleged fraudulent conduct touched upon a security transaction.

It is no defense to an overall scheme to defraud that the defendant may not have been involved in the scheme from its inception or beginning, or may have played only a minor role with no contact with the investors and purchasers of the securities in question. Nor is it necessary for you to find that the defendant was the actual seller or offerer of the securities. It is sufficient if the defendant participated in the scheme of fraudulent conduct that involved the purchase or sale of securities. By the same token, the government need not prove that the defendant personally made the misrepresentation or that he omitted the material fact. It is sufficient if the government establishes that the defendant caused the statement to be made or the fact to be omitted. With regard to the alleged misrepresentation and omissions, you must determine whether the statement was true or false when it was made, and in the case of the alleged omission, whether the omission was misleading.

What is a material fact. If you find that the government has established beyond a reasonable doubt that the

a statement was false or omitted in connection with a purchase or sale of any securities, you must next determine whether the fact misstated or omitted was material under the circumstances. A misrepresentation is material under 10(b) of the Securities Exchange Act, and under Rule 10b-5 where there's a substantial likelihood that a reasonable investor would find a misrepresentation important in making an investment decision. If you find that there was a material misrepresentation or omission of a material fact, it does not matter whether the intended victims were gullible buyers or sophisticated investors, because the securities laws protect the gullible and unsophisticated as well as the experienced investor.

Nor does it matter whether the alleged unlawful conduct was successful or not, or that the defendant profited or received any benefits as a result of the alleged scheme. Success is not an element of the crime charged. However, if you find that the defendant did profit from the alleged scheme, you may consider that in relation to the element of intent, which I will discuss in a moment.

If you find that the government has not proven this element beyond a reasonable doubt, you must find Mr. Shkreli not guilty. On the other hand, if you do find that the government has proven that a fraudulent act was committed by Mr. Shkreli beyond a reasonable doubt, then you must consider

the second element. You need not find that the government has proven each of the alleged fraudulent acts, but I remind you that you must reach a unanimous decision as to at least one fraudulent act.

The second element is knowledge intent and wilfulness. The second element that the government must establish as to Count Three for MSMB Capital, and Count Six for MSMB Healthcare, is that Mr. Shkreli acted knowingly, willfully, and with intent to defraud.

As I explained before, a person acts knowingly if he acts purposefully and voluntarily and not because of ignorance, mistake, accident, negligence, or carelessness.

Willfully means to act knowingly and purposely with an intent to do something the law forbids; that is to say, with bad purpose either to disobey or disregard the law. Intent to defraud in the context of the securities laws means to act knowingly and with intent to deceive.

The question of whether a person acted knowingly, willfully, and with intent to defraud is a question of fact for you to determine like any other fact question. This question involves one's state of mind.

Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that, as of a given time in the past, he committed an act with fraudulent

intent. Such direct proof is not required.

The ultimate facts of knowledge and criminal intent is subjective and may be established by circumstantial evidence based upon a person's outward manifestations, his words, his conducts, his acts, and all the surrounding circumstances disclosed by the evidence and the rational or logical inference that may be drawn therefrom.

I already have instructed you as to what circumstantial evidence is and the inferences that may be drawn from it. Those instructions will also apply here. What is referred to as drawing inferences from circumstantial evidence is no different from what people normally mean when they say "use your common sense." Using your common sense means that you're deciding whether Mr. Shkreli possessed or lacked an intent to defraud, you do not limit yourself to what Mr. Shkreli said, but rather you also look at what he did and what others did he in relation to Mr. Shkreli and, in general, everything that occurred.

Circumstantial evidence, if believed, is of no less value than direct evidence. In either case, the essential elements of the crime charged must be established by the government beyond a reasonable doubt.

Under the antifraud statutes, even false representations or omissions of material facts do not amount to a fraud unless done with fraudulent intent. However

misleading or deceptive a plan may be, it is not fraudulent if it was devised or carried out in good faith. An honest belief in the truth of the representations made by a defendant is a complete defense, however inaccurate the statements may turn out to be.

In considering whether or not a defendant acted in good faith, you are instructed that a belief by the defendant, if such belief existed, that ultimately everything would work out so that no investors would lose any money does not require a finding by you that the defendant acted in good faith. No amount of honest belief on the part of the defendant did the scheme ultimately will make a profit for the investors will excuse fraudulent actions or false representations by him.

As a practical matter, then, to prove the charge against a defendant, the government must establish beyond a reasonable doubt that the defendant knew that his conduct as a participant in the scheme was calculated to deceive and, nonetheless, he associated himself with the alleged fraudulent scheme.

If you find that Mr. Shkreli did not knowingly and with the intent to deceive -- I'm sorry. If you find that Mr. Shkreli did not act knowingly and with the intent to deceive, then you must find the defendant not guilty. On the other hand, if you find that the government has established beyond a reasonable doubt not only the first element but also

this second element; that is, that Mr. Shkreli acted knowingly and with the intent to deceive, then you must consider the third element. I remind you that you must reach a unanimous decision in connection with each element.

The third element is instrumentality of interstate commerce. The third and final element that the government must prove beyond a reasonable doubt as to Count Three for MSMB Capital, and Count Six for MSMB Healthcare, is that Mr. Shkreli knowingly used, or caused to be used, the mails or means or instrumentalities of transportation or communication in interstate commerce in furtherance of the scheme to defraud. This would include the use of a telephone, a bank wire transfer, or an email sent over the internet that traveled across state lines.

It is not necessary that a defendant be directly or personally involved in any mailing, wire, or use of an instrumentality of interstate commerce. If the defendant was an active participant in the scheme and took steps or engaged in conduct which he knew or reasonably could foresee would naturally and probably result in the use of interstate means of communication, then you must find that he caused the mails or an instrumentality of interstate commerce to be used.

When one does an act with the knowledge that the use of interstate means of communication will follow in the ordinary course of business, or where such use reasonably can

be foreseen, even though not actually intended, then he causes sum means to be used.

It is not necessary that the items sent through the interstate means of communication contain a fraudulent material or anything criminal or objectionable. The interstate means of communication may be entirely innocent.

The use of interstate communications need not be central to the execution of the scheme, and may even be incidental to it. All that is required is that the use of the interstate communications bear some relation to the object of the scheme or fraudulent conduct. In fact, the actual offer or sale need not be accomplished by the use of interstate communications, so long as the defendant is still engaged in the actions that are part of the fraudulent scheme when the interstate communications are used.

Now, the government next has to prove securities fraud banking. I have explained the elements the government must prove beyond a reasonable doubt as to the securities fraud charge in Counts Three and Six. The government must also prove venue. And unlike the elements I just explained to you, that the government must prove beyond a reasonable doubt, the government must prove venue by what's called a preponderance of the evidence. To establish a fact by the preponderance of the evidence means to prove that the fact was more likely true than not. A preponderance of the evidence

means the greater weight of the evidence, as if you're using a scale. Both direct and circumstantial evidence may be considered. It refers to the quality and persuasiveness of the evidence, not merely to the quantity of the evidence.

To establish venue for securities fraud, as charged in Counts Three and Six, the government must prove that it is more likely than not that: One, the defendant intentionally and knowingly caused an act or transaction constituting a securities fraud to occur, at least in part, in the Eastern District of New York, which consist of the county of Kings, also known as Brooklyn; Queens, Richmond County, also known as Staten Island; or Nassau, or Suffolk counties; or two, that it was foreseeable that such an act or transaction would occur in the Eastern District of New York, and that it did. The government need not prove that the defendant personally was present in the Eastern District of New York. It is sufficient to satisfy the venue requirement that the defendant intentionally and knowingly caused an act or transaction constituting a securities fraud to occur, at least in part, within the Eastern District of New York.

The government must also prove that the act or transaction must be part of the actual crime of securities fraud and not merely a step taken in preparation for the commission of the crime.

Therefore, if you find that it is more likely than

not that an act or transaction in furtherance of the securities fraud took place in the Eastern District of New York, the government has satisfied its burden of proof as to venue as to Count Three.

Again, I caution you that the preponderance of the evidence standard applies only to venue. The government must prove each of the elements of securities fraud in Counts Three and Six beyond a reasonable doubt.

In sum, if you find the government has failed to prove any one of the elements for either Count Three for MSMB Capital, or Count Six for MSMB Healthcare, beyond a reasonable doubt, then you must find Mr. Shkreli not guilty of securities fraud for that count. To find Mr. Shkreli guilty of securities fraud as charged in Count Three or Count Six, you must find that the government has proven beyond a reasonable doubt each element of the securities fraud charged in Counts Three for MSMB Capital, or Count 6 for MSMB Healthcare, and also that the government has established venue for that count by a preponderance of the evidence.

We will next talk about Counts One and Four, which is conspiracy to commit securities fraud.

Count One of the superseding indictment charges Mr. Shkreli with conspiracy to commit securities fraud with respect to MSMB Capital, and Count Four charges him with conspiracy to commit securities fraud with respect to MSMB

Healthcare. Count One of the superseding indictment charges Mr. Shkreli with conspiracy to commit securities fraud in connection with MSMB Capital as follows:

In or about and between September 2009 and September 2014, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant, Martin Shkreli, together with others, did knowingly and willfully conspire to use and employ manipulative and deceptive devices and contrivances, contrary to Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission, Title 17, Code of Federal Regulations, Section 240.10b-5 by: A, employing devices, schemes, or artifices to defraud; B, making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(Continued on next page.)

THE COURT: And (c) engaging in the acts, practices and courses of business which would and did operate as a fraud and deceit upon investors and potential investors in MSMB Capital in connection with a purchase and sale of investments in MSMB Capital, directly and indirectly, by use of means and instrumentalities of interstate commerce and the mails contrary to Title 15, United States Code, sections 78j(b) and 78ff.

In furtherance of the conspiracy to commit securities fraud and to effect its objects within the Eastern District of New York and elsewhere, the defendant, Martin Shkreli, together with others committed and caused to be committed among others, the following overt acts:

A. On or about October 24, 2009, Marek Biestek sent an e-mail to Steve Richardson copying Shkreli and enclosing the "MSMB Capital investor kit," which included a presentation and a private placement memorandum.

C. On or about June 9, 2010, Shkreli sent an e-mail to Darren Blanton, attaching MSMB Capital documents and stated, in part: "The fund is a 1/20 fee structure with no lock-ups. We have a daily results e-mail some people like to see. Hedge fund performance should be easy enough to report/calculate estimates on a daily basis, and it is. I'd love to have you as an investor it looks like we see eye to eye on a number of topics."

D. On or about October 6, 2010, Shkreli sent an e-mail to the Capital Limited Partners, including Steven Richardson, and attached a letter entitled "MSMB Capital Management Limited Partnership Letter for Q3 2010." In the letter Mr. Shkreli stated, in part, that the "partnership performed well, returning 9 percent in Q3 2010," and that brought the "gross year to date return to 44 percent."

E. On or about December 3rd, 2010, Mr. Shkreli sent an e-mail to Darren Blanton and stated in part that MSMB Capital's current assets under management were $35 million. Its auditor was Rothstein Kass and administrator was NAV Consulting.

F. On or about January 3rd, 2011, Shkreli sent an e-mail to the Capital Limited Partners, including Steven Richardson, and stated that MSMB Capital had "returned +30.44 percent in 2010" and "+30.97 percent since inception on November 1st, 2009."

G. On or about February 2, 2011, Shkreli sent an e-mail to Marek Biestek and an employee and attached a spreadsheet detailing MSMB Capital's OREX trading.

H. On or about February 9, 2011, Shkreli sent an e-mail to the Capital Limited Partners, including Darren Blanton and Steven Richardson, and stated that MSMB Capital had, quote, "returned a +3.80 percent gross of fees year to date and +35.95 percent since inception on November 1, 2009."

I. On or about November 17, 2011, Darren Blanton sent a letter to Shkreli provided written notice of a request for a full withdrawal of his investment in MSMB Capital based on the fund's net assets valued as of November 30, 2011.

J. On or about January 25, 2012, Shkreli sent an e-mail to Darren Blanton copying others and stating, in part quote, "You invested $1,250,000 for the 12/31/2010 period. The value of this period is now approximately $1,318,872 net of fees. We acknowledge your redemption and this will be your last statement."

K. On or about September 10, 2012, Shkreli sent an e-mail to the Capital Limited Partners, including Steven Richardson, and stated, in part, quote, "I have decided to wind down our hedge fund partnerships with a goal of completing the liquidation of the funds by November our December 1st, 2012. Original MSMB investors (2009) have just about doubled their money net of fees. Investors have will have their limited partnership interests redeemed by the fund for cash. Alternatively investors may ask for a redemption of Retrophin shares or a combination of Retrophin shares and cash."

Count Four of the Superseding Indictment charges Mr. Shkreli with conspiracy to commit securities fraud in relation to MSMB Healthcare as follows:

In or about are and between February 2011 and

September 2014, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant Martin Shkreli, together with others, did knowingly and willfully conspire to use and employee manipulative and deceptive devices and contrivances contrary to Rule 10-b-5 of the Rules and Regulations of United States Securities and Exchange Commission, Title 17, Code of Federal Regulations, Section 240.10b-5, by: (A) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made in light of the circumstances under which they were made not misleading; (c) engaging in acts, practices and courses of business which would and did operate as a fraud and deceit upon investors and potential investors in MSMB Healthcare in connection with a purchase and sale of investments in MSMB Healthcare directly and indirectly by use of means and instrumentalities of interstate commerce and the mails, contrary to Title 15, United States Code, Sections 78j(b) and 78ff.

In furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere, the defendant Martin Shkreli, together with others, committed and caused to be committed among others, the following overt acts:

A. On or about December 16, 2011, Shkreli sent an

e-mail to Kevin Mulleady and stated that MSMB Healthcare had 45 million in assets under management. And 80 million in assets under management if the full value of Retrophin was taken into account.

B. On or about April 18, 2011, Shkreli sent an e-mail to Kevin Mulleady and stated that MSMB Healthcare had 55 million in assets under management.

C. On or about April 19, 2012, in response to an inquiry by a potential sophisticated investor about how MSMB Healthcare could pay employee salaries with a modest asset base of 55 million. Mr. Shkreli stated, quote, "Lots of ways, many of us have zero salaries or low salaries. We have some expenses the fund pays for and yet other deferments that are creative. We will tell more when we meet."

D. On or about September 10, 2012, Shkreli sent an e-mail to the Healthcare Limited Partners, including Alan Geller and stated, in part, "I have decided to wind down our hedge fund partnerships with a goal of completing the liquidation of the funds by November or December 1st, 2012. Original MSMB investors (2009) have just about doubled their money net of fees. Investors will have their limited partnership interests redeemed by the fund for cash. Alternatively, investors may ask for a redemption of Retrophin shares or a combination of Retrophin shares and cash."

I have already explained to you the crime of

securities fraud. To find that Mr. Shkreli is guilty of Count One you must find that Mr. Shkreli conspired to commit securities fraud as to MSMB Capital. To find Mr. Shkreli guilty of Count Four you must find that Mr. Shkreli conspired to commit securities fraud as to MSMB Healthcare.

For Counts One and Four, the Government need not prove that Mr. Shkreli actually committed securities fraud, the unlawful acts charged as the objects of the conspiracy in Counts One and Four. However, you must find beyond a reasonable doubt that Mr. Shkreli conspired with one or more individuals to commit securities fraud.

Conspiracy, I will now instruct you on conspiracy.

The relevant portion of the conspiracy statute, Title 18, United States Code, section 371, provides in relevant part that it shall be unlawful for "two or more persons to conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner, or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy."

A conspiracy is a kind of criminal partnership, at the heart of which is an agreement or understanding by two or more persons to violate other laws. A conspiracy to commit a crime is an entirely separate and different offense from the underlying crime that the conspirators intended to commit.

Thus, if a conspiracy exists, it is still punishable as a crime, even if it should fail to achieve its purpose. A defendant may be found guilty of conspiracy, even if he was incapable of committing the substantive crime. Consequently, for a defendant to be guilty of conspiracy there is no need for the Government to prove that he or any other conspirator actually succeeded in their criminal goals or that they could have succeeded.

How are you? Do you want to take a stretch? Need a break? A break, okay. I'll continue this instruction when we return.

(Jury exits the courtroom.)

(Whereupon, a recess was taken at 2:30 p.m.)

THE COURT: Let's take a few minutes.

* * * *

(Jury enters the courtroom.)

THE COURT: All jurors are present. Please have a seat. Thank you members of the jury for your ongoing attention. I know this is a lot.

I was in the middle of advising you about conspiracy to commit securities fraud, so I will pick up where I left off.

To prove the crime of conspiracy to commit securities fraud, the Government must prove four elements beyond a reasonable doubt.

First, that two or more persons entered into an agreement to commit securities fraud, as I have defined the crime of securities fraud on page 32.

Second, the defendant knowingly and intentionally became a member of the conspiracy.

Third, that one of the members of the conspiracy committed at least one of the overt acts charged in the Superseding Indictment.

And Four, that at least one overt act was in furtherance of some object or purpose of the conspiracy as charged in the Superseding Indictment.

The first element existence of the agreement. The first element that the Government must prove beyond a reasonable doubt for Counts One and Four is that two or more persons entered into the charged agreement to commit securities fraud. One person cannot commit a conspiracy alone, rather the proof must convince you that at least two persons joined together in a common criminal scheme. The Government need not prove that members of the conspiracy met together or entered into any express or formal agreement. You need not find that the alleged conspirators stated in words or writing what the scheme was, its objects or purpose, or the means by which the scheme was to be accomplished. It is sufficient to show that the conspirators tacitly came to a mutual understanding to accomplish an unlawful act by means of

a joint plan or common design.

You may, of course, find that the existence of an agreement between two or more persons to violate the law has been established by direct proof. But since, by its very nature a conspiracy is characterized by secrecy, direct proof may not be available. Therefore, you may infer the existence of a conspiracy from the circumstances of this case, and the conduct of the parties involved. In a very real sense, then, in the context of conspiracy cases, actions often do speak louder than words. In determining whether an agreement existed here, you may consider the actions and statements of all those you find to be participants in the conspiracy as proof that a common design existed to act together for the accomplishment of the unlawful purpose stated in the Superseding Indictment.

The second element that must be proven beyond a reasonable doubt is membership in the conspiracy. The Government must prove beyond a reasonable doubt for Counts One and Four that the defendant knowingly intentionally became a member of the charged conspiracy. I've explained to you what it means to act knowingly and intentionally. A person acts knowingly an intentionally, if he acts voluntarily, deliberately and purposely and not because of ignorance, mistake, accident, negligence or careless innocence. In other words, did the defendant participate in the conspiracy with

knowledge of its unlawful purpose and with a specific intention of furthering its business or objective? Knowledge and intent may be inferred from a secretive or irregular manner in which activities are carried out. Whether a defendant acted knowingly may be proven by the defendant's conduct and by all of the facts and circumstances surrounding the case.

In order for a defendant to be deemed a member of the conspiracy he need not have taken a stake in the venture or its outcome. While proof of a financial or other interest in the outcome of a scheme is not essential, if you find that the defendant did have such an interest, it is a factor that you may properly consider in determining whether or not the defendant was a member of the conspiracy charged in the Superseding Indictment.

A defendant's participation in the conspiracy must be established by independent evidence of his own acts and statements as well as those of the other alleged co-conspirators and the reasonable inferences that may be drawn from them.

A defendant's knowledge may be inferred from the facts proved and that connection, I instruct you that, to become a member of the conspiracy a defendant need not have been apprised of all of the activities of all members of the conspiracy. Moreover, a defendant need not have been fully

informed as to all of the details or the scope of the conspiracy in order to justify an inference of knowledge on his part. In addition, a defendant need not have joined in all of the conspiracy's unlawful objectives.

In considering whether a defendant participated in a conspiracy, be advised that a conspirator's liability is not measured by the extent or duration of his participation, as he need not have been a member of the conspiracy for the entire time of its existence. In addition, each member of the conspiracy may perform separate and distinct acts and may perform them at different times. Some conspirators play major roles, while others play minor parts in the scheme. An equal role is not what the law requires. Even a single act may be sufficient to draw a defendant within the ambit of this conspiracy. The key inquiry is simply whether a defendant joined the conspiracy charged with an awareness of at least some of the basic aims and purposes of the unlawful agreements and with the intent to help it succeed.

I caution you that mere knowledge or acquiescence without participation, in an unlawful plan is not sufficient. Moreover, the fact that the acts of a defendant, without knowledge, merely happened to further the purposes or objectives of the conspiracy, does not make the defendant a member. More is required under the law. What is required is that a defendant must have participated with knowledge of at

least some of the purposes or objectives of the conspiracy, and with the intention of aiding in the accomplishment of these unlawful ends. In sum, a defendant with an understanding of the unlawful character of the conspiracy must have intentionally engaged, advised or assisted in it for the purpose of furthering the illegal undertaking.

The third element that the Government must prove beyond a reasonable doubt is that one of the members of the conspiracy knowingly committed at least one of the overt acts charged in the Superseding Indictment as I have read them before.

In order for the Government to satisfy this element it is not required that all of the overt acts alleged in the Superseding Indictment be proven, or that the overt act was committed at precisely the time alleged in the Superseding Indictment. It is sufficient if you are convinced beyond a reasonable doubt that the overt act occurred at or about the time place stated. Similarly, you need not find that the defendant himself committed the overt act. It is sufficient for the Government to show that one of the conspirators knowingly committed an overt act in furtherance of the conspiracy, since in the eyes of the law such an act becomes the act of all of the members of the conspiracy.

The fourth element: In furtherance of some objective of the conspiracy. If you find that overt act or

acts were committed, the Government must prove beyond a reasonable doubt that the overt act or acts were done specifically to further some objective of the conspiracy. In order for the Government to satisfy this element it must prove beyond a reasonable doubt that at least one overt act was knowingly and willfully done by at least one conspirator, in furtherance of some object or purpose of the conspiracy as charged in the Superseding Indictment. In this regard you should bear in mind the overt act standing alone may be an innocent lawful act. Frequently however, an apparently innocent act sheds its harmless character if it is a step in carrying out, promoting, aiding or assisting the conspiratorial believe scheme. Therefore, you are instructed that the overt act does not have to be an act which, in and of itself, is criminal or constitutes an objective of the conspiracy.

In sum, in order to prove that Mr. Shkreli is guilty of Counts One and Four, the Government must prove beyond a reasonable doubt: 1) that Mr. Shkreli entered into an agreement with one or more individuals to commit securities fraud. 2) that Mr. Shkreli knowingly and intentionally joined the conspiracy. 3) that at least one of the overt acts charged in the Superseding Indictment was committed by at least one member of the conspiracy. And 4) that the overt act was committed specifically to further some objective of the

conspiracy.

If you find that the Government has not proven any one of these elements then you must find Mr. Shkreli not guilty of Counts One and Four.

We're going to talk about venue. I have explained to you the elements the Government must prove beyond a reasonable doubt as to Counts One and Four. The Government must also prove venue. As I've previously explained to you, the Government must prove venue only by a preponderance of the evidence. I remind you that to establish a fact by a preponderance of the evidence, means to prove that the fact is more likely true than not.

I've already explained venue for the securities fraud counts, charged in Counts Three and Six. To establish venue for conspiracy to commit securities fraud as charged in Counts One, Four and Eight, conspiracy to commit wire fraud as charged in Counts Two, Five, Seven the Government must prove that it is more likely than not that an overt act in furtherance of the conspiracy was committed in the Eastern District of New York, which consists of the counties of King, also known as Brooklyn, Queens, Richmond, also known as Staten Island, Nassau and Suffolk. The overt act does not have to be an overt act that is charged in the Superseding Indictment in furtherance of the conspiracy. In this regard the Government need not prove that the crime charged was committed in the

Eastern District of New York. Or that Mr. Shkreli, or any alleged co-conspirator, was even physically present here. It is sufficient to satisfy the venue requirement if an overt act in furtherance of the conspiracy occurred within the Eastern District of New York. This includes acts not just by Mr. Shkreli or his co-conspirators, but also acts that the conspirators caused others to take that materially furthers the ends of the conspiracy.

Therefore, if you find that it is more likely than not that an overt act in furtherance of the conspiracy took place in the Eastern District of New York, the Government has satisfied its burden of prove as to venue as to Counts One, Two, Four, Five, Seven and Eight. Again, I caution you that the preponderance of the evidence standard applies only to venue. The Government must prove each of the elements of all the counts of the crimes charged beyond a reasonable doubt.

In sum, if you find that the Government has failed to prove any one of the elements for either Count One for MSMB Capital, or Count Four for MSMB Healthcare, beyond a reasonable doubt then you must find Mr. Shkreli not guilty of securities fraud conspiracy for that count.

To find Mr. Shkreli guilty of conspiring to commit securities fraud as charged in Count One or Count Four, you must find that the Government has proven beyond a reasonable doubt each element of the conspiracy to commit securities

fraud in Count One for MSMB Capital or Count Four for MSMB Healthcare. And that the Government has also established venue for that count by a preponderance of the evidence.

We will next talk about Counts Two and Five, which charge conspiracy to commit wire fraud.

Count Two of the Superseding Indictment charges Mr. Shkreli with conspiracy to commit wire fraud as to MSMB Capital, and Count Five charges Mr. Shkreli with conspiracy to commit wire fraud as to MSMB Healthcare.

Count Two of the Superseding Indictment charges Mr. Shkreli with conspiracy to commit wire fraud in connection with MSMB Capital as follows.

In or about and between September 2009 and September 2014, both dates being approximate and inclusive within the Eastern District of New York and elsewhere, the defendant, Martin Shkreli, together with others, did knowingly and intentionally conspire to device a scheme and artifice to defraud investors and potential investors of MSMB Capital, to obtain money and property from them by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice to transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce writings, signs, signals, pictures and sounds contrary to Title 18, United States Code, Section 1343.

Count Five of the Superseding Indictment charges Mr. Shkreli with conspiracy to commit wire fraud in connection with MSMB Healthcare as follows:

In or about and between February 2011 and September 2014, with both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant, Martin Shkreli, together with others, did knowingly and intentionally conspire to devise a scheme and artifice to defraud investors and potential investors of MSMB Healthcare and to obtain money and property from them by means of materially false and fraudulent pretenses representations and promises.

(Continued on next page.)

THE COURT: And for the purpose of executing such scheme and artifice to transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writing, sign, signal, pictures and sound contrary to Title 18, United States Code Section 1343.

I have already explained to you what a conspiracy is. That is, what it means to conspire to commit an offense, and again, the wire fraud conspiracy. As a reminder, the Government need not prove that Mr. Shkreli actually committed the unlawful act charged as the object of the conspiracy in Counts 2 and 5, that is, wire fraud. Rather the Government must prove each one of the following two elements, beyond a reasonable doubt. First, that two or more persons entered into an agreement to commit wire fraud, and, second, that Mr. Shkreli knowingly and intentionally7 became a member of the conspiracy.

The overt acts on which I instructed you with respect to Counts 1 and 4 which charge conspiracy to commit securities fraud do not apply to Counts 2 and 5 which charges conspiracy to commit wire fraud.

Let's talk about wire fraud, the definition, and the fifth element. I will now define wire fraud, which is alleged to be the object of the conspiracy charged in Count 2 involving MSMB Capital and Count 5 involving MSMB Healthcare. The relevant statute regarding wire fraud

in Section 1343 of Title 18 of the United States Code which provides that whoever, having devised or intending to devise any scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses, representation or promises transmits or causes to be transmitted by means of wire, radio or television communication in interstate or foreign commerce any writing, sign, signal, pictures or sounds for the purpose of executing such scheme or artifice shall be guilty of the crime.

The elements of wire fraud are: First, that there was a scheme or artifice to defraud or obtain money or property by false and fraudulent pretenses, representations or promises as alleged in the superseding indictment.

Second, that the defendant knowingly and willfully participated in this scheme or artifice to defraud with knowledge of its fraudulent nature and with specific intent to defraud.

And, third, that in the execution of this scheme the defendant used or caused the use of interstate wires.

The first element, that is, the existence of the scheme or artifice to defraud investors and potential investors and MSMB Capital as to Count 2 and MSMB Healthcare as to Count 5, and to obtain money or property from them by means of false and fraudulent pretenses, representations or

promises.

A scheme or artifice is simply a plan for the accomplishment of an objective. Fraud is a general term which embarrasses all the various means that an individual can devise and what that are used by an individual to gain an advantage other another by false representation, suggestion, suppression or omission of the truth or deliberate disregard for the truth.

A scheme or artifice to defraud for the purpose of the wire fraud statute is any plan, device or course of action designed to obtain money or property by means of false representation: That the scheme to defraud is a plan to deprive another of money or property by trick, deceit, deception or swindle or overreaching. The scheme to fraud giving rise to the wire fraud conspiracy charged in Counts 2 and 5 are alleged to have been carried out by making false representations. The statement, representation, claim or document is false if it is untrue when made and was known at the time to be untrue by the person making it or causing it to be made. A representation or a statement is fraudulent if it was falsely made with the intention to deceive. Deceitful statements of half truths or the concealment or omission of material fact and the expression of an opinion not honestly entertained may compensate false or fraudulent representations under the statute.

The fraudulent representation must relate to a material fact or matter. The material fact in the context of wire fraud is one that reasonably would be expected to be of concern to a reasonable and prudent person in relying on the representation or statements in making a decision.

The deception need not be premised upon spoken or written words alone. The arrangement of words or the circumstances in which they are used may convey a false and deceptive appearance. If there is an intentional deception, the manner in which it is accomplished does not matter.

In addition to proving a statement was false or fraudulent and related to a material fact, in order to establish a scheme to defraud, the Government must prove that the alleged scheme contemplated depriving another of money or property. It is not necessary that the Government prove that the defendant actually realized any gain from the scheme or that the intended victim actually suffered any loss.

The second element is participation in the scheme with intent. The second element of wire fraud is that the defendant participated in the scheme to defraud knowingly, willfully and with the specific intent to defraud. I've already instructed you on the meaning of knowingly and willfully. I'll refer you to those instructions as they apply here also.

For the purpose of the wire fraud statute, a intent to defraud means to act knowingly and with specific intent to deceive for the purpose of causing some financial or property loss to another.

I will remind you, however, that the question of whether a person acted knowingly, willfully and with intent to defraud is a question of fact for you to determine, like any other fact question.

This question involves the defendant's state of mind. As I said before, direct proof of knowledge and fraudulent intent is not necessary.

The ultimate fact of knowledge and criminal intent though subjective, may be established by circumstantial evidence based upon a person's outward manifestation, his or her words, his or her conduct, his or her acts and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them. Circumstantial evidence is believed is of no less value than direct evidence.

Under the wire fraud scheme even if false representations or statements or omissions of material fact do not amount to a fraud -- under the wire fraud statute even false representations or statements or omissions of material facts do not amount to a fraud unless done with fraudulent intent.

However misleading or deceptive a plan may be, it is not fraudulent if it was devised or carried out in good faith. An honest belief in the truth of the representations made by a defendant is a complete defense however inaccurate the statement may turn out to be.

A defendant, however, has no burden to establish a defense of good faith. There is another consideration to bear in mind in deciding whether or not the defendant acted in good faith. You are instructed that if the defendant conspired to commit wire fraud then the belief by the defendant, if such a belief existed, that ultimately everything would work out so that no one would lose any money does not require you to find that the defendant acted in good faith. No amount of honest belief on the part of the defendant that the scheme would, for example, ultimately make a profit for investors will excuse fraudulent actions or false representations caused by him to obtain money or property. I reiterate, however, that an intent to defraud for purposes of the wire fraud statute means to act knowingly and with specific intent to deceive for the purpose of causing financial loss or property loss to another. As a practical matter you may mind intent to defraud if the defendant knew that his conduct as a participant in the scheme was calculated to deceive and nonetheless he associated himself with the alleged

fraudulent scheme for the purpose of causing loss to another.

The third element is use of a wire. The third and final element of wire fraud is the use of an interstate or international wire communication in furtherance of the scheme to defraud. The wire communication must pass between two or more states or it must pass between the United States and a foreign country. A wire communication includes a wire transfer of funds between banks in different states, telephone calls, e-mails and facsimiles between two different states.

The item sent through the wires need not self-contain a fraudulent representation. However, it must further or assist in the carrying out of the scheme to defraud. It is not necessary for the defendant to be directly or personally involved in the wire communication as long as the communication was reasonably foreseeable in the execution of the alleged scheme to defraud in which the defendant is accused of participating. I remind you that the Government need not prove that Mr. Shkreli actually committed wire fraud, the unlawful act charged as the object of the conspiracy in Counts 2 and 5. Rather, the Government must prove beyond a reasonable doubt -- what the Government must prove beyond a reasonable doubt is that the purpose of the conspiracy was to commit wire fraud and that the

defendant knowingly and intentionally joined that conspiracy.

I have previously instructed you on venue for the conspiracy count, and those instructions apply here. In sum, if you find that the Government has failed to prove either of the elements of conspiracy for either Count 2 for MSMB Capital or Count 5 for MSMB Healthcare beyond a reasonable doubt, then you must find Mr. Shkreli not guilty of wire fraud conspiracy for that count.

To find Mr. Shkreli guilty of conspiracy to commit wire fraud as charged in Count 2 or Count 5, you must find that the Government has proven beyond a reasonable doubt both elements of conspiracy as charged in Count 2 for MSMB Capital or Count 5 for MSMB Healthcare and that the Government has also established venue on that count by a preponderance of the evidence.

I will now charge you on Count 7. Count 7 of the superseding indictment charges Mr. Shkreli with wire fraud conspiracy in connection with Retrophin as follows: In or about and between February 2011 and September 2014 both days approximate and inclusive within the Eastern District of New York and elsewhere, the defendant Martin Shkreli, together with others did knowingly and intentionally conspire to devise and scheme and artifice to defraud Retrophin and to obtain money and property from Retrophin by

means of materially false and fraudulent pretenses, representations, and promises. And for the purpose of executing such scheme and artifice, to transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, writing, sign, signals, pictures and sound contrary to Title 18, United States Code Section 1343. With regard to the conspiracy to commit wire fraud I have already explained what it means to conspire to commit an offense. Those same instructions apply to Count 7.

I further remind you that Government need not prove that Mr. Shkreli actually committed wire fraud, the unlawful act charged as the object of the conspiracy in Count 7, rather the Government must prove each one of the following two elements beyond a reasonable doubt.

First, that two or more persons entered into an agreement to commit wire fraud and, second, that the defendant knowingly and intentionally became a member of the conspiracy: With regard to wire fraud I have already instructed you on the elements of wire fraud. Those same instructions apply to Count 7.

As a reminder, as I instructed you on Page 63, the elements of wire fraud are: First, that there was a scheme or artifice to defraud or to obtain money or property by false and fraudulent pretenses, representation, or promises as alleged in the superseding indictment. A fraudulent

representation may include the failure to disclose material information if the defendant was under a legal, professional or contractual duty to make such a disclosure. You have heard testimony regarding the fiduciary duty of corporate officers and directors. One such duty, the duty of loyalty mandates that the best interest of the corporation and its shareholders take precedence over any interest to satisfy a director or officer and not shared by the stockholders generally.

However, in order for a failure to disclose material information to constitute a fraudulent representation, the purpose of the wire fraud statute, the defendant must have actually known that such disclosure was required to be made and must have failed to make such disclosures with the intent to defraud.

Second, that the defendant knowingly and willfully participated in the scheme for artifice to defraud with knowledge of its fraudulent nature and specific intent to defraud.

And third, that in the execution of that scheme the defendant used or caused to be used of interstate wires. Specifically as to Count 7, the Government alleges that Mr. Shkreli together with others conspired the defraud Retrophin by causing it to, one, transfer Retrophin shares to MSMB Capital investors even though MSMB Capital -- I'm

sorry.

Specifically as to Count 7, the Government alleges that Mr. Shkreli together with others conspired to defraud Retrophin by causing it to, one, transfer Retrophin shares to MSMB Capital even though MSMB Capital never invested in Retrophin.

2: Enter into settlement agreements with defrauded MSMB Capital and MSMB Healthcare investors to settle liabilities owed by MSMB funds and Shkreli.

And 3: Enter into sham consulting agreements with defrauded MSMB Capital or Elea Capital investors as an alternative means to settle liability owed by the MSMB funds and Mr. Shkreli.

You can find Mr. Shkreli guilty of Count 7 only if the Government has proven both elements of the conspiracy beyond a reasonable doubt as to one of the above means satisfied in 1, 2 or 3 or as to any one of the settlement and consulting agreements, but you must be unanimous as to that finding.

Venue, with regard to venue I have already previously instructed you on venue for wire fraud conspiracy, and those instructions apply here.

Now, with regard to Count 8. Count 8 of the superseding indictment charges Mr. Shkreli with conspiracy to commit securities fraud in connection with Retrophin as

follows: In or about and between November 2012 and September 2014, both days being approximate and inclusive within the Eastern District of New York and elsewhere, the defendant Martin Shkreli together with others did knowingly and willfully conspire to use and employ manipulative and deceptive devices and contrivances contrary to Rule 10B5 of the rules and regulations of the United States Securities and Exchange Commission Title 17, Code of Federal Regulations Section 240.10B5 by, A, employing devices, schemes and artifices to defraud.

B, making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made in light of the circumstances under which they were made not misleading.

And C, engaging in acts, practices and course of business which would and did operate as a fraud and deceit upon investors and potential investors in Retrophin in connection with a purchase and sale of securities of Retrophin directly and indirectly by use of means and instrumentality of interstate commerce and the mail contrary to Title 15, United States Code Section 7, 8 -- 78JB and 78FS.

In furtherance of the conspiracy and to effect its object within the Eastern District of New York and elsewhere, the defendant Martin Shkreli together with others

committed and caused to be committed amongst others the following overt acts: A, on or about December 12, 2012, Evan Greebel sent an e-mail to Marek Biestek attaching six stock purchase agreements and stated in part, quote, "Attached are purchase agreements for the acquisition of the unrestricted stock. Please ask each person to sign the last page and return it to me," end of quote.

B, on or about December 13th, 2012 Evan Greebel sent an e-mail to Marek Biestek and one of the seven employees and contractors who received unrestricted or free-trading shares and stated in part quote: "Please send me an e-mail confirming the following: I represent that I am not an officer, a director or holder of 10 percent or more of the outstanding equities, securities of Desert Gateway and do not alone or together with any other person exercise control over Desert Gateway," end of quote.

C, on or about December 17th, Mr. Shkreli sends an e-mail to all employees copying six of the seven employees and contractors who received unrestricted and free-trading shares and stated that Retrophin now had four employees and that everyone else, including the employees and contractors who received the unrestricted or free-trading shares were no longer employees or consultants to Retrophin or MSMB, even though they could continue using Retrophin's office space as courtesy. Mr. Shkreli then forwarded this e-mail to Evan

Greebel.

D: On or about December 20, 2012, Evan Greebel sent an e-mail to Shkreli attaching a Schedule 13D and stated "Attached is a draft of the 13D. We should discuss," end of quote.

E: On or about December 20th Shkreli filed an Schedule 13D with be SEC that failed to disclosure his control over any of the unrestricted or free-trading shares.

F: On or about January 2nd, 2013, Shkreli sent an e-mail to Evan Greebel requesting Evan Greebel's thought on a draft e-mail that Shkreli wanted to send to one of the seven employees and consultants who received unrestricted or free-trading shares and ws selling his RTRF stock. In the draft e-mail Shkreli stated in part, quote, "I have decided to commence litigation against you for failing to honor the agreement that we made in our office on December 10th. You agreed to work for MSMB. Instead you have failed to come to the office. You will not even return my telephone calls." End of quote.

Less than 30 minutes later Evan Greebel replied to Shkreli and stated, quote, "Very risky given what your agreement was. Could be opening a much bigger can of worms." End of quote.

G: On or about February 19, 2013 Shkreli filed an amended Schedule 13D with the SEC that failed to disclosure

his control over any of the unrestricted or free-trading shares.

H: On or about March 8th, 2013 Evan Greebel sent an e-mail to Shkreli and stated, quote, "Michael Fearnow and the purchasers are signing an amendment to their purchase agreement and in the amendment the purchaser is directing Michael Fearnow to have the stock delivered to designated people." End of quote.

I: On or about April 10th, 2013, Evan Greebel sent an e-mail to Michael Fearnow and Shkreli and stated in part, quote, "The 50K unrestricted or free-trading shares that were owed to Marek Biestek should be broken down as following," end of quote.

On or about -- J -- J -- on or about May 9th, 2013 in response to an e-mail from Evan Greebel requesting the source of unrestricted or free-trading shares to settle a dispute with a distraught an MSMB Healthcare investor Shkreli stated, quote, "Take from anyone. I don't care. Do the math." End of quote.

Conspiracy. Again, I've already instructed you on conspiracy generally at Page 51. Those same instructions apply here. As a reminder, the Government need not prove that Mr. Shkreli actually committed securities fraud, the unlawful act charged as the object of the conspiracy in Count 8. Rather, the Government must prove beyond a

reasonable doubt the following: First that two or more persons entered into an agreement to commit securities fraud.

Second, that the defendant knowingly and intentionally became a member of the conspiracy.

Third, that one of the members of the conspiracy knowingly committed at least one of the overt acts charged in the superseding indictment.

And fourth, that the overt act or acts that you find were committed were done specifically to further some objectives of the securities fraud conspiracy.

With regard to securities fraud I've already instructed you on the elements of securities fraud at Page 32 of these instructions.

As a reminder the elements of securities fraud are: First, in connection with the purchase or sales of securities Martin Shkreli did one or more of the following:

1: Employed a device, scheme, or artifice to defraud.

Or 2, made an untrue statement of material fact or omitted to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made not misleading; or

3: Engaged in an act, practice or course of business that operated or would operate as a fraud or deceit

upon a purchaser or fellow.

Second, to act willfully, knowing and with the intent to defraud.

Third, to knowingly use or cause to be used any means or instrumentalities of transportation or communication in interstate commerce or the use of the mail in furtherance of the fraudulent conduct.

Any conduct that is designed to deceive or defraud investors by controlling or artificially affecting the price of securities is prohibited. An essential element of manipulation of securities is the deception of investors into believing that the prices at which they purchase and sell securities are determined by the natural interplay of supply and demand.

You have also heard the parties use the term affiliate. An affiliate of an issuer under the law means a person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with such issuer. Whether a person is an affiliate of Retrophin is a question of fact for the jury.

With regard to venue I have previously instructed you on venue for the securities fraud conspiracy, those instructions apply here.

Now, a word about the defenses. First, the good faith attempt. This faith is a complete defense to the

charges in this case if defendant believed in good faith that he was acting properly even if he was mistaken in that belief and even if others were injured by his conduct, there would be no crime. If you believe that Mr. Shkreli believed in the truth of the representations that he made then it does not make any difference if the representations were untrue. The burden of establishing the last of the good faith in criminal intent rests on the Government. A defendant is under no burden to prove his good faith, rather, the Government must prove bad faith or knowledge of falsity beyond a reasonable doubt.

As a reminder I instruct you that when considering the offense of good faith you consider it in conjunction with my instructions on Page 41 and 68 regarding the defendant's belief if such belief existed that ultimately everything would work out so that no one would lose money.

The second defense is reliance on counsel. You've heard evidence that with regard to Count 7 and 8 Mr. Shkreli received advice from a lawyer and you may consider that evidence in deciding whether Mr. Shkreli acted willfully and with knowledge and with fraudulent intent. The mere fact that Mr. Shkreli may have received legal advice does not in itself necessarily constitute a complete defense. Instead you must consider whether, first, Mr. Shkreli honestly and in good faith sought the advice of a competent lawyer as to

what he may lawfully do.

Second, whether he fully and honestly laid out all the facts before his lawyer.

And three, whether in good faith he honestly followed such advice relying on it and believing it to be correct.

In short, you should consider whether he's seeking and obtaining advice from a lawyer Mr. Shkreli intended that his acts shall be lawful. If he did so it is the law that the defendant cannot be convicted of a crime that involved willful and unlawful intent even if such advice was an inaccurate construction of a law.

On the other hand a defendant cannot willfully and knowingly violate the law and excuse himself from the consequences of his conduct by arguing that he followed the advise of his lawyer. Whether Mr. Shkreli acted in good faith for the purpose of seeking guidance as to the specific acts in this case, whether he made full and complete reports to his lawyer and whether he acted substantially in accordance with the advice received from his lawyer are questions for you to determine.

Now for the closing instructions. I have now outlined for you the rules and applicable -- the rules of law applicable to the charges in this case and the processes by which you should weigh the evidence and determine the

facts. In a few minutes you will retire to the jury room for your deliberations.

First, regarding the selection of a foreperson. When you retire you will choose one member of the jury to act as the foreperson. That person will preside over the deliberations and speak for you here in open court. In order for your deliberations to proceed in an orderly fashion, you must have a foreperson, but, of course, his or her opinion or both or not entitled to any greater weight than that of any other juror. The foreperson merely acts as your mouthpiece here in court.

2: Let me talk to you about verdict -- your verdict and deliberations. The Government to prevail must prove the essential elements by the required degree of proof as already explained in these instructions. If the Government succeeds, your verdict should be guilty as to the count; if it fails your verdict should be not guilty as to the count.

To report a verdict it must be unanimous, meaning all of you must agree. Your function is to weigh the evidence in the case and determine whether or not the defendant is guilty based solely upon the evidence.

Each juror is entitled to his or her opinion. Each should, however, exchange views with his or her fellow jurors. That is the very purpose of jury deliberation, to

discuss and consider the evidence, to listen to the views of you fellow jurors, to present your own individual views, to consult with one another, and to reach an agreement based solely and wholly on the evidence, if you can do that without violence to you own individual judgment.

Each of you must decide the case for yourself after consideration with your fellow jurors of the evidence in the case. But you should not hesitate to change an opinion back after discussion with your fellow jurors it appears it's erroneous. However, if after carefully considering all of the evidence and the arguments of your fellow jurors, you entertain a conscientious view that differs from the others, you are not to yield your conviction simply because you were outnumbered.

Your final vote must reflect your conscientious conviction as to how the issues should be decided. Your verdict, whether guilty or not guilty, must be unanimous. As you deliberate your function is to weigh the evidence in the case and to determine whether the defendant is guilty beyond a reasonable doubt solely upon the basis of such evidence. Under your oath as jurors you may not consider any consequences, including the punishment that may be imposed upon the defendant if he is convicted.

You may not permit that to influence your verdict or in any way enter into your deliberation. The duty of

imposing punishment rests exclusively with the Court.

In addition, during your deliberations you must not communicate with or provide any information to anyone by any means about this case, you may only discuss the case within the confines of the jury room. You may not use any electronic device or media such as the telephone, a cell phone, Smartphone, iPhone, Blackberry or computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog or website such as Facebook, MySpace, Instagram, LinkedIn, YouTube or Twitter to communicate to anyone about any information regarding the case or to conduct any research about this case.

In other words, you cannot talk to anyone on the phone, correspond with anyone or electronically communicate with anyone about the case except with your fellow jurors in the jury room during deliberations.

Along the same lines you should not try to access any information about the case or do research on any issue that arose during the trial with any outside source, including dictionary, reference books, or anything on the Internet.

Information that you may find on the Internet or in a printed reference might be incorrect or incomplete and in our court system it is important that you not be

influenced by anyone or anything outside of the courtroom.

Your sworn duty is to decide this case solely and wholly on the evidence that was presented to you in this courtroom.

A word about note taking. Your notes are to be used solely to assist you and are not to be substituted for your recollection of the evidence in this case. Do not assume simply because someone appears in a juror's note that it necessarily took place in court. Instead it is your collective memory that must control as you deliberate upon the verdict. The fact that a particular juror has taken notes entitles that juror's views to no greater weight than those of any other juror and your notes are not to be shown to any other juror during your deliberations. They are your notes and yours alone.

A word about communications with the Court. If it becomes necessary during your deliberations to communicate with me for any reason, simply send me a note signed by your foreperson or by one or more other members of the jury. No member of the jury should ever attempt to communicate with me or with any other court personnel by any means other than a signed writing. I will not communicate with any member of the jury on any subject touching on the merits of this case other than in writing or orally here in the courtroom in open court. Do not ever disclosure how the jury stands

numerically or otherwise on the question of guilt or innocence.

You do have the right to see the evidence. You will have the exhibits and a list of exhibits received in evidence during the course of the trial in the jury room with you. If you wish to have any portion of the testimony repeated, you may simply indicate that in a note. Be as specific as you can if you make such a request. Let us know which exhibit or which part of which witness' testimony you want to hear and please be patient while we locate it. So try to specify the name and subject matter of any testimony that you would like to hear.

If you need further instructions on any point of law, you should also indicate that in a note.

Now, when you have reached a unanimous verdict, simply send me a note signed by your foreperson if you have reached a verdict. Do not indicate in the note what your verdict is. To record a verdict it must be unanimous and you must be prepared to render a verdict for the defendant as to each count of the superseding indictment, so consider each count separately.

To help you I have prepared a verdict form that may be of assistance to you in your deliberations. On the verdict sheet are spaces marked guilty or not guilty for each count. The form is in no way intended to indicate how

you must deliberate or decide the facts of this case. The foreperson should use a checkmark in the appropriate space indicating guilty or not guilty for each count of the superseding indictment with which Mr. Shkreli is charged. The foreperson should also place his or her initials and the date beside each mark on the verdict form. So for each count there be will a box that will be checked by the foreperson depending on what your unanimous verdict is and that foreperson will initial and date the form.

The foreperson should also sign the bottom of the verdict form and date the verdict form.

Finally, I want to remind you of the oath that you took when you were sworn as a juror at the beginning of this case. Remember, in your deliberations that this case is no passing matter for the Government or for Mr. Shkreli. The parties and the Court rely upon you to give full and conscientious deliberation and consideration to the issues and evidence before you. By so doing we carry out the fullest your oaths as jurors to well and truly try the issues of the case and a true verdict render.

Before asking you to retire to the jury room and begin your deliberations, let me first consult with counsel to be certain I have not overlooked any point.

(Continued on next page.)

(The following occurred at sidebar.)

MR. BRAFMAN: Your Honor --

MS. KASULIS: So -- go ahead.

MR. BRAFMAN: Your Honor, we obviously reserve the objections we made and if we leave in that with respect to no ultimate harm but other than that, we have no objections to the Court's Charge, other than what was previously named.

MS. KASULIS: There are no objections from the Government, Your Honor.

We did want to rise the issue of the alternate jurors?

THE COURT: Yes. I will instruct them on that as soon as we are finished here.

MS. KASULIS: Okay.

MR. BRAFMAN: Are you keeping them, I hope?

THE COURT: Yes, I am going to keep them.

MS. KASULIS: Okay, great.

MR. BRAFMAN: Okay.

THE COURT: They are going to be segregated, and I usually -- I instruct them not talk.

MR. BRAFMAN: I think you should do that.

I have just one question, and it's your call, obviously. Do you want to ask them whether they want to begin deliberations now or whether they want to start on Monday morning fresh? It's been a long day for everyone, so

it's truly -- if you want to ask that question.

MS. KASULIS: The Government -- we don't have a position either way.

THE COURT: Well, I will see how they feel. I think they will probably, hopefully, will want to get moving on the deliberations. If they would like to start fresh on Monday, that is fine, too.

MR. BRAFMAN: But I'm not certain they know they have that option.

THE COURT: I will speak to them.

MR. BRAFMAN: Okay. Thank you, Judge.

MS. KASULIS: Thank you, Judge.

(Continued on next page.)

(In open court, sidebar ends.)

THE COURT: Members of the jury, there are a few matters that I must just bring up with you. The first is whether you would like to begin your deliberations now or start fresh on Monday? I recognize you have been sitting and paying close attention throughout the day. So I leave you with that option.

Is there a general view about whether to start now or begin on Monday?

THE JURY: Monday.

THE COURT: Monday?

All right. The second matter -- that is fine.

The second matter is that the alternate jurors, those jurors sitting in Seats 13 through 18 are asked to remain at the courthouse each day and not to discuss the case. You are here because if one of the 12 jurors seated before you becomes unable to continue deliberations, the next juror will be brought in, deliberations will begin anew, and that juror will join the deliberations.

So what I told you before about not discussing the case, still applies to all of you who are not in the jury room. So Jurors 13 through 18 may not discuss the case.

You will be provided with lunch, and you will be held in a room, a separate area, or you may be in the courthouse in a different area if you wish, but you may not

discuss the case amongst yourselves or with any other person. If it becomes necessary to replace you in the jury room, and into deliberations, as I said, you may then discuss it with fellow jurors. So the prohibition against discussions apply to the alternates.

And with regard to Jurors 1 through 12, do not discuss the case now with anybody still. You may only discuss within the confines of the jury room the evidence in the case. In addition, if one of you has not yet arrived in the morning, you may not deliberate. If one of you steps out for a rest-room break, you may not deliberate. You may only deliberate when all 12 of you are present.

We will be sending back the exhibits, a copy of the superseding indictment, and the instructions. And those will be available for you on Monday when you commence your deliberations. Once we note that you are all present here Monday, hopefully it will be close to 9:00 as possible, we will bring all of those materials in for your consideration.

There will also be a court security officer sitting outside your door. That person will be the person to whom you will write notes to me with any requests for evidence or questions, and that person will then contact me and we will assemble here in court, or I will send a note back to you to respond to your questions per your request.

With that, I will wish you a good weekend. I want

to thank you all for your attention and your service. And please do not discuss the case over the weekend.

Please leave your notebooks on your chairs and we will make sure that those come back to you on Monday.

(Jury exits the courtroom at 3:46 p.m. to being deliberations on Monday, July 31, 2017 at 9:00 a.m.)

(The following matters occurred outside the presence of the jury.)

THE COURT: Is there anything else -- one thing we would like to do is get all counsels' cell phone numbers so we can call. And we would ask you not the stray more than five minutes from the courtroom. If we get a note, we want to bring you back and get you involved on whatever the note may provide, all right?

So my clerk will take your cell phone numbers. Please just confer with him and give him your cell numbers. Thank you.

MS. KASULIS: Thank you, Your Honor.

THE COURT: Thank you.

MR. SRINIVASAN: Have a good weekend.

MS. KASULIS: Thank you.

(Matter adjourned to Monday, July 31, 2017 at 9:00 a.m.)

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